113-213

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 161.

WILLIBALD VOSS, APPELLANT,

vs.

CHARLES J. FISHER.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

FILED NOVEMBER 15, 1881.

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1 Know all men by these presents, that we, Willibald Voss, as principal, and Marcus P. Brown, as surety, both of Grand Rapids, Michigan, are held and firmly bound unto Charles J. Fisher, of the same place, in the sum of five hundred dollars, to be paid to the said Charles J. Fisher or to his certain attorney, executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves and our heirs, executors, or administrators, jointly and severally, firmly by these presents. Sealed this eighth day of March, in the year of our Lord one thousand eight hundred and eighty-one.

Whereas, lately, at a session of the circuit court of the United States for the sixth circuit and western district of Michigan, in equity, southern division, in a suit depending in said circuit, between Charles J. Fisher, as complainant, and Willibald Voss, as defendant, a decree was made in favor of said complainant and against said defendant, and the said Willibald Voss having filed a petition to appeal said cause to the Supreme Court of the United States, and the said appeal having been allowed, and a citation having been issued and served upon the said Charles J. Fisher, citing and
2 admonishing him to be and appear at the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next: Now, the condition of this obligation is such that if the said Willibald Voss shall prosecute his said appeal to effect and answer all damages and costs that may be adjudged against him if he fail to make his said plea good, including just damages for delay and costs and interest on the appeal, without fraud or delay, then the preceding obligation to be void; otherwise to remain in full force and virtue.

WILLIBALD VOSS. [L. S.]
MARCUS P. BROWN. [L. S.]

I, Solomon L. Withey, district judge of the United States court for the western district of Michigan, do hereby approve of the foregoing bond and the sufficiency of the security thereto.

Dated March 10, 1881.

S. L. WITHEY,
Dist. Judge.

Supersedeas bond. Filed March 10th, 1881.
H. M. HINSDILL, *Clerk.*

3 The United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at Washington, on the second Monday of October next, to answer the appeal of Willibald Voss from a decree made by the circuit court of the United States for the sixth circuit and western district of Michigan, in equity, southern division, in a cause wherein Charles J. Fisher is complainant and Willibald Voss is defendant, to show cause, if any there be, why the decree rendered against the said defendant should not be corrected and reversed, and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Solomon L. Withey, presiding judge of the circuit court of the United States for the sixth circuit and western district of Michigan, in equity, southern division, this 10th day of March, A. D. 1881.

S. L. WITHEY,
District Judge of the United States for the Western District of Michigan.

To CHARLES J. FISHER, Complainant.

4 UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

Omar H. Simonds, of Grand Rapids, in said district, being duly sworn, says: That on the 10th day of March, A. D. 1881, he delivered a true copy of the within citation to Messrs. Taggart, Stone & Earle, the solicitors for Charles J. Fisher, the person to whom the within citation is directed, by delivering the same to Edward Taggart, one of the members of said firm, in the city of Grand Rapids, aforesaid.

OMAR H. SIMONDS.

Subscribed and sworn to before me, this 10th of March, A. D. 1881.
G. A. WOLF,
Notary Public, Kent County, Michigan.

Citation and proof of service. Filed March 10, 1881.
H. M. HINSDILL, *Clerk.*

5 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

The circuit court of the United States for the sixth circuit and western district of Michigan:

Your petitioner, Willibald Voss, the above-named defendant, respectfully represents that the bill of complaint in said cause was filed to restrain your petitioner from manufacturing, using, and selling a certain style and kind of collar-pads on the ground that such manufacture, use, and sale thereof infringed a certain patent on collar-pads issued to the complainant by the Commissioner of Patents of the United States, and also to require your petitioner to account for all profits realized by him from such manufacture, use, and sale.

That your petitioner filed his answer in said cause denying the validity of said patent, and setting forth that the device cov-
6 ered by said patent was old; that said complainant was not the first and original inventor thereof, and that the same was in common use by many different persons long before the alleged invention thereof by said complainant; that upon this issue a large amount of proof was taken by both complainant and defendant,

and that after a full hearing before said court an introductory decree was made therein declaring said patent to be valid, and that your petitioner had infringed the same, and referring it to a master to ascertain and report to the court the profits that your petitioner had realized in making, using, and selling such pads, and that on the (24th) twenty-fourth day of February, A. D. 1881, a final decree was made in said cause in favor of said complainant and against your petitioner for fifty-four and $\frac{17}{100}$ dollars, that being the amount of profits as represented by the master as realized by your petitioner in making, using, and vending said pads and costs.

Your petitioner further represents that said decree is against his just rights in the premises, and ought to be reversed and a decree made in your petitioner's favor dismissing said bill of complaint.

7 Your petitioner, therefore, prays that the proceedings and decree in said cause may be brought before the Supreme Court of the United States, and that a decree may be made in said Supreme Court dismissing said bill of complainant, with costs; and, that on filing a bond to be approved by the judge of the said circuit court, all proceedings be stayed in said cause until the final disposition thereof by said Supreme Court. And your petitioner will ever pray, &c.

WILLIBALD VOSS,
Petitioner.

Petition for appeal. Filed March 10th, 1881.
H. M. HINSDILL, *Clerk.*

8 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Compl't, *vs.* WILLIBALD VOSS, Def't.

The said defendant, Willibald Voss, having prayed an appeal from the decree of this court, heretofore entered in said cause, to the Supreme Court of the United States, on motion of Simonds & Fletcher, solicitors for said defendant—

Ordered by the court now here that an appeal from the whole of said decree to said Supreme Court be, and the same is hereby, allowed to the said Willibald Voss.

It is further ordered that this appeal shall operate as a supersedeas upon the defendant filing with this court a bond, duly approved, in the penal sum of five hundred dollars.

Dated March 10th, 1881.

S. L. WITHEY,
Dist. Judge.

Order allowing appeal. Filed March 10, 1881.
H. M. HINSDILL, *Clerk.*

9 UNITED STATES OF AMERICA:

To the judges of the circuit court of the United States for the sixth circuit and western district of Michigan, sitting in equity:

1. Charles J. Fisher, of the city of Grand Rapids, Michigan, and

who is a citizen of the State of Michigan, brings this his bill of complaint against Willibald Voss, of the city of Grand Rapids, county of Kent, and State of Michigan, and doing business within said district, defendant herein.

2. And thereupon your orator complains and says: That heretofore, to wit, before the fourth day of May, in the year eighteen hundred and sixty-nine, your orator, who was then a citizen of the United States, being the original and first inventor of a certain new and useful improvement in collar-pads not at that time in public use nor on sale with his consent or allowance for more than two years, made an application in due form of law to the Government of the United States for its letters patent for such improvement, upon which application such proceedings were had; that on the said fourth day of May, A. D. 1869, letters patent of the United States, dated the said fourth day of May, signed by the Secretary of the Interior and countersigned and sealed with the seal of the Patent Office by the Commissoner of Patents, and numbered 89646, were issued and delivered to your orator as inventor for the said invention, entitled an "improved neck-pad for horses," whereby there was granted to your orator, his heirs, administrators, or assigns, for the term of seventeen years from the said date thereof, the full and exclusive right and liberty of
10 making, constructing, using, and vending to others to be used the said improvement as in and by the said letters patent (No. 89646) or a certified copy thereof, now in court produced and shown to your honors, will more full appear.

3. And your orator further shows and alleges that he is the sole and only owner of the said letters patent, and is fully possessed of all the exclusive rights, benefits, and advantages secured by the same.

4. And your orator further shows unto your honors that the object attained by the practical use of said invention is to form a neck-pad having a perfectly smooth inner surface to prevent injury and galling to the neck of the horse.

5. And your orator further shows that soon after the issuing the said patent as aforesaid, large sums of money were expended by your orator in tools and machinery for the purpose of manufacturing the said patented invention and supplying the demands of the trade with the said improvement; and your orator has ever since at all times kept on hand and been prepared to furnish "neck-pads" in any number desired, and has constructed and put in use a large number of neck-pads made in accordance with said invention, and your orator well hoped that defendant and all persons seeking to use the said improvement would buy the neck-pad of your orator, or would pay to your orator the royalty due him for the use of said inventon.

6. And your orator further shows unto your honors that by the wrongful act of defendant and other persons (as hereafter more fully shown) the business of your orator of manufacturing and
11 supplying said invention to the trade has been entirely destroyed, and your orator has suffered great loss and injury thereby.

7. And your orator further shows unto your honors that the defendant herein, having full knowledge of the premises, and in violation of your orator's exclusive right and privilege, as aforesaid, and entirely disregarding the same, has, since the fourth day of May, A. D. 1869, and without the license of your orator, at the county of Kent, in the said district, and at various other places in the United States, manufactured, used, and still continues to manufacture and use large numbers of neck-pads, embracing the improvement and invention described in said letters patent No. 89646, and so secured to your orator—how many your orator is unable to say, but prays that the defendant may discover and set forth in answer to this bill.

8. And your orator further shows unto your honors that he will be subject to great and irreparable injury unless he shall obtain from this court the relief hereby sought.

9. To the end, therefore, that the said defendant may, if he can, show cause why your orator should not have the relief hereby prayed, and may, upon his corporal oath and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter mentioned and set forth as by the note hereunder written he is required to answer, that is to say—

10. 1st. Whether he has not made or caused to be made or used neck-pads similar in construction and containing substan-
12 tially the same invention as that covered by your orator's letters patent since the fourth day of May, A. D. 1869, and what number thereof.

11. 2nd. Whether he has not made or caused to be made or used since the fourth day of May, A. D. 1869, and what number thereof, neck-pads, which contain in their construction the same principle secured to your orator by said letters patent; and, if yea, how many?

12. 3rd. Whether he has not made or caused to be made or used any neck-pads for which defendant has first obtained a consent of your orator to use the same, and paid him royalty for such use; and, if yea, how many such pads in use by defendant has royalty been paid on? Answer particularly.

13. 4th. Whether he has not now on hand and in use—and, if so, how many—pads which contain in their construction substantially the same principles as are secured to your orator by said letters patent No. 89646, and on which no royalty has ever been paid to your orator; and, if yea, how many? Answer fully and particularly.

14. And the said defendant may answer the premises and may be decreed to account for and pay over to your orator all such gains and profits as have accrued to him from his said infringement of your orator's patent.

15. And also to pay to your orators, in addition to the said profits, the damages which have been sustained by your —— by reason of said infringement.

16. And that he may be restrained by an injunction issu-
13 ing out of this honorable court from making or using any neck-pad embracing the improvement so secured to your orator as aforesaid.

17. And also, that an injunction issue so restraining the defendant pending this cause, and for such other and further relief as the nature of the case may require and to your honor may seem meet.

18. May it please this honorable court to grant unto your orator, not only a writ of injunction conformable to the prayer of this bill, but also the writ of subpœna, directed to the said Willibald Voss, commanding him to appear and answer this bill of complaint, and to do and receive what to your honors shall seem meet.

And your orator will ever pray.

CHARLES S. FISHER.

TAGGART & BOYD,
Complainants' Solicitors, and of Counsel.

Note referred to in paragraph No. 9.

The above-named defendant is required to answer interrogatories numbered 1, 2, 3, & 4.

14 UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

On this 22nd day of June, A. D. 1878, personally appeared Charles J. Fisher, who signed the foregoing bill of complaint, and made oath that he had heard the same read, and understands the same and the contents thereof, and that the same is true of his own knowledge as therein stated, except as to matters and things stated therein on information and belief, and as to those matters he believes it to be true.

REUBEN W. POWERS,
Notary Public, Kent Co., Michigan.

UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

Charles J. Fisher, of the city of Grand Rapids, county of Kent and State of Michigan and district aforesaid, being first duly sworn, deposes and says: That on the fourth day of May, A. D. 1869, he obtained a patent for an improved neck-pad, which letters patent is numbered 89646; and deponent further says that he verily believes himself to be the original and first inventor of the invention mentioned and described in said letters patent No. 89646, and the specifications thereto attached.

And further says not.

CHARLES J. FISHER.

Subscribed and sworn to before me, this 22nd day of June, A. D. 1878.

RUBIN W. POWERS,
Notary Public, Kent Co., Michigan.

15 UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

I, John Mohrhard, acknowledge myself surety for costs to the amount of $250, for which the complainant may be liable for in this suit.

Dated Oct. 17th, '78. JOHN MOHRHARD.

16 [Endorsed:] U. S. circuit court. In equity. Charles J. Fisher, comp't, *vs.* Willibald Voss, def't. Bill of complaint. Filed June 28, '78. C. B. Hinsdill, clerk. Taggart & Boyd, sol'rs for comp't.

17 *Chancery Subpœna.*

THE UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, Southern Division, }

The President of the United States of America to Willibald Voss, Greeting:

We command you, and every of you, that you appear before our judges of our circuit court of the United States of America for the western district of Michigan, at Grand Rapids, in said district, on the first Monday in the month of August next, to answer the bill of complaint of Charles J. Fisher, this day filed in the clerk's office of said court, in said city of Grand Rapids, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the western district of Michigan to execute.

Witness the Hon. Morrison R. Waite, chief justice of the Supreme Court of the United States of America, at Grand Rapids aforesaid, this 22 day of June, in the year of our Lord one thousand eight hundred and seventy-eight.

[L. S.] CHESTER B. HINSDILL, *Clerk*,
By A. B. CARRIER, *Deputy.*

MEMORANDUM.—The within-named defendant is notified that unless he enter his appearance in the clerk's office of said court, at Grand Rapids aforesaid, on or before the day to which the within writ is returnable, the bill of complaint will be taken against him as confessed and a decree entered accordingly.

CHESTER B. HINSDILL, *Clerk*,
By A. B. CARRIER, *Deputy.*

17½ WESTERN DISTRICT OF MICHIGAN, *ss:*

I hereby certify and return that on the twenty-second day of June, A. D. 1878, I served the within writ on Willibald Voss, defendant within named, at Grand Rapids, in said district, by delivering to him a true copy, and at the same time showed him this original, with the seal of the court impressed thereon and like memorandum.

JOHN PARKER, *U. S. Marshal*,
By R. S. PARKMAN, *Deputy.*

[Endorsed:] No. —. Circuit court of the United States, western district of Michigan, southern division. Charles J. Fisher, complainant, *vs.* Willibald Voss, defendant. Chancery subpœna. Returnable to rule day first Monday in August, A. D. 1878. Filed June 24, A. D. 1878. C. B. Hinsdill, clerk. Taggart & Boyd, compl't's sol'rs.

18 In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

AUGUST 5TH, A. D. 1878.

CHARLES J. FISHER, Complainant,

vs.

WILLIBALD VOSS, Defendant.

In this cause, on motion of Simonds & Fletcher, solicitors for said defendant, Willibald Voss, it is ordered that the appearance of the said defendant be, and the same is hereby, entered by the clerk of said court in accordance with the rules and practice thereof; and on further motion of said solicitors it is ordered that said complainant serve a copy of the bill of complaint on file herein on the solicitors for said defendant, Willibald Voss, within twenty days after service of notice of this order, or that in default thereof said bill be dismissed with costs.

SIMONDS & FLETCHER,
Solicitors for Defendant.

19 Circuit Court of the United States, Southern Division of the Western District of Michigan. In Equity.

The answer of Willibald Voss, of Grand Rapids, Michigan, to the bill of complaint of Charles J. Fisher, of the same place, and to so much or such parts thereof, as he is advised that it is material for him to make answer unto, answering, says:

I. This defendant is not informed, save by said bill, whether before the 4th day of May, 1869, Charles J. Fisher was the original and first inventor of a certain new and useful improvement in collar-pads, not at that time in public use, nor on sale, with his consent or allowance for more than two years before that date; he therefore denies the said allegations, and each thereof, and of the other allegations in paragraph 2 of his bill contained, as he may be advised.

II. This defendant is not informed, save by said bill, whether the allegations in paragraphs 3, 4, and 5 of said bill contained are true or not; he therefore leaves said plaintiff to make such proofs thereof as he may be advised.

III. This defendant, further answering, denies that, as in para-
6 alleged, by the wrongful act of this defendant, said plaintiff
20 has suffered great loss and injury; and as to the acts of other parties in the sixth paragraph mentioned, they are, so far as he is concerned, without legal relevancy or consequence.

IV. This defendant denies that, having full knowledge of the premises, or in violation of any rights of the plaintiff, he has, since the 4th day of May, 1869, without the license of said plaintiff, in the county of Kent, in said district, or at various other places in the United States, manufactured, used, and sold, or that he still, or now continues to manufacture, use, and sell, large numbers of, or any, neck-pads, embracing the improvements and inventions described in the letters patent in said bill mentioned, as is alleged in the seventh paragraph of said bill, save as is herein otherwise stated.

The defendant says that since the 4th day of May, 1869, and for many years previous to that date, he manufactured and sold many "neck-pads" formed of a piece of leather, turned up at the ends or edges, so as to lessen the liability of galling the horse's neck, crimped to preserve the shape, and provided with two straps for attachment to the horse-collar; that he is wholly unable to state how many of such "neck pads" he has so manufactured and sold; that these "neck-pads" were paid for, but this defendant has no knowledge, information, or belief as to what proportion of the amounts so paid is properly assignable to the devices (claimed by said plaintiff) employed in their construction, as contradistinguished from the labor expended upon, and the material consumed in their production, nor can he approximate thereto.

21

V. This defendant avers that he has never, at any place, either before or since the 4th day of May, 1869, or at any time, made or sold any neck-pads involving the devices claimed by said plaintiff, save as in the last preceding paragraph of this answer set forth, and he denies that the said making and selling of such collar-pads were any violation of or infringement upon the rights secured to the said Fisher under the said letters patent.

VI. This defendant, in answer to the special interrogatories of said bill, says that his answer to interrogatories 1, 2, and 3 is contained in paragraph IV of this answer, and that he has no knowledge, nor any means of information, which will enable him to make a more full and explicit answer to the same.

VII. This defendant, in answer to special interrogatory 4 of said bill, says that he has now on hand about two (2) dozen "collar-pads," constructed in the manner described in paragraph IV of this answer, and admits that he has never paid to said plaintiff any royalty upon these "collar-pads," nor upon any other "collar-pads" whatever, and again denies that the manufacture or sale of such pads constitutes any infringement upon or violation of the rights of said plaintiff, secured under the letters patent in paragraph 2 of his bill of complaint mentioned.

22

VIII. This defendant further avers, upon information and belief, that if the claim of the said patent of said Fisher is to be interpreted as embracing therein the devices, or any of them, of providing the "collar-pad" with straps for attachment to the collar, and of turning up or crimping, or both turning up and crimping, the edges of the piece of leather which is to rest immediately upon the horse's neck, for the purpose of preserving the shape of the pad, or of lessening the liability to gall the horse's neck, or of securing a smooth inner surface, or for any or all of these purposes, then the said devices, or substantial or material parts thereof, were not the invention of the said Fisher, but were known to and used by others prior to the date of the original patent of said Fisher; that is, they were known to and used by Cullen Brown, of the city of Detroit, in the State of Michigan, in the said city, now deceased; Frank Mattison, of No. 54 Canal St., Grand Rapids, Mich., in the said city; Charles J. Kruger, of 34 Ransom St., Grand Rapids, Mich., in said city; Frederick W. Tusch, of 304 West Bridge St., Grand Rapids, Mich.,

in said city; Sebastian Klaiber, 247 South Division St., Grand Rapids, Mich., in the said city; Ferdinand Eikhoff, of 19 West Broadway, Grand Rapids, Mich., in said city, and in Detroit, Michigan, now deceased; Willibald Voss, the defendant herein, of 123 Canal St., Grand Rapids, Mich., in said city.

IX. This defendant further avers, upon information and belief, that if the claim of the said patent of the said Fisher is to be interpreted as upon the combination of the devices or straps for
23 attachment to the collar and a "neck-pad" or "collar-cap," of which the ends or edges have been turned up or crimped, or both turned up and crimped, for the purposes hereinbefore, in paragraph VIII, more fully set forth, then the said combination was not the invention of the said Fisher, but was known to and used by the persons named in, and by them respectively at the places alleged in paragraph VIII of this answer, prior to the alleged date of the letters patent of said plaintiff.

X. And this defendant further avers, upon information and belief, that if the said Fisher made any inventions in, or improvements upon, collar-pads, as in his bill of complaint alleged, he abandoned the same and allowed the same to become, and the same was, in public use and on sale for more than two years prior to his application for letters patent, as alleged in said bill of complaint.

XI. And this defendant further avers, upon information and belief, if the claim of the patent of said Fisher is to be interpreted as embracing the neck-pad as a whole, or anything else than the devices or straps for attachment to the collar and a neck-pad or collar-cap, of which the edges have been turned up or crimped, or both turned up and crimped, for the purposes hereinbefore in paragraph VIII more fully set forth, or as embracing the combination of said devices, then said claim is void, as embracing upon its face the said devices which were not the inventions of the said Fisher.

24 XII. This defendant, further answering, denies each and every other allegation in the said bill of complaint contained not hereinbefore admitted, controverted, or denied. All of which this defendant is willing to aver, maintain, and prove, as this honorable court shall direct; and he prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

WILLIBALD VOSS.

UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

On this 3rd day of September, 1878, before me personally came Willibald Voss, the defendant named in the foregoing answer, and who has signed the same, and he, being by me duly sworn, did depose and say: That he had read the said answer and knew the contents thereof, and that the same was true of his own knowledge, except as to the matters therein stated to be on information and belief, and that as to those matters he believed it to be true.

FREDERIC W. PAIN,
Notary Public, Kent Co., Mich.

25 [Endorsed:] U. S. circuit court, N. W. div. Mich. In equity. Chas. J. Fisher *vs.* Willibald Voss. Answer. Filed Sept. 3, '78. C. B. Hinsdill, clerk. Simonds & Fletcher, sol'rs for def't.

26 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Compl't *vs.* WILLIBALD VOSS, Def't.

The replication of Charles J. Fisher, complainant, to the answer of Willibald Voss, defendant.

This repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be taken to the manifold insufficiencies of said answer, for replication thereunto say that they will aver, maintain, and prove his said bill of complaint to be true, certain, and sufficient in law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things this repliant is, and will be, ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

TAGGART & BOYD,
Sol'rs for Compl't.

We hereby accept service of a copy of the within replication.
Dated Sep. 10th, 1878. SIMONDS & FLETCHER.

27 [Endorsed:] U. S. circuit court. In equity. Chas. J. Fisher, comp't, *vs.* Willibald Voss, def't. Replication. Filed Sept. 9, '78. C. B. Hinsdill, clerk. Taggart & Boyd, sol'rs for compl't.

28 UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant
vs.
WILLIBALD VOSS, Defendant.

You are hereby notified that the above-named complainant, Charles J. Fisher, desires the evidence to be adduced in the above-entitled cause to be taken orally in accordance with general equity rule 67 of said court.

Dated September 7th, A. D. 1878.

Yours, &c., TAGGART & BOYD,
Solr's for Compl't.

To Messrs. SIMONDS & FLETCHER, *Solr's for Def't.*

We hereby accept service of a copy of the within notice.
Dated Sep. 10th, 1878.

SIMONDS & FLETCHER.

29 [Endorsed:] U. S. circuit court. In equity. Charles J. Fisher, comp'lt *vs.* Willibald Voss, def't. Notice to take testimony orally. Filed Sept. 9, '78. C. B. Hinsdill, clerk. Taggart & Boyd, sol'rs for compl't.

30 In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

In the above-entitled cause it is hereby stipulated by and between the respective parties hereto, by their respective solicitors, that Charles A. Renwick, Esq., be appointed special examiner to take the testimony of witnesses to be produced by the parties hereto before him to be used on the trial of this cause; and that the complainant have twenty days within which to take his evidence in support of his bill, and the defendant forty-five days thereafter within which to take his evidence in defense, and the complainant twenty-five days thereafter within which to take his evidence in reply.
Sept. 10th, 1878.

TAGGART & BOYD,
Sol'rs for Compl't.
SIMONDS & FLETCHER,
Sol'rs for Def't.

31 [Endorsed:] U. S. circuit court. In equity. Chas. J. Fisher, comp't, *vs.* Willibald Voss, def't. Stipulation appointing spe. examiner and fixing time to take proofs. Filed Sept. 12, '78. C. B. Hinsdill, clerk. Taggart & Boyd, sol'rs for comp't.

32 *Orders. U. S. Court.*

THE UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the twelfth day of September, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and third.

Present: The Honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

In the above-entitled cause it is hereby ordered, in accordance with the stipulation of the solicitors—Taggart and Boyd, for the

complainant, and Simonds and Fletcher, for the defendant—that Charles A. Renwick, Esq., be, and he hereby is, appointed special examiner to take the testimony of witnesses to be produced by the parties in said cause; and that the complainant have twenty days within which to take his evidence in support of his bill, and the defendant forty-five days thereafter to take his evidence in defense, and the complainant twenty-five days thereafter in which to take his evidence in reply.

Order appointing special examiner and fixing time to take proofs.
Filed and entered September 12, 1878.

C. B. HINSDILL, *Clerk.*

33 The Circuit Court of the United States for the Western District of Michigan. In Equity.

CHARLES J. FISHER *vs.* WILLIBALD VOSS.

In this cause, it is hereby stipulated between the parties thereto, by their respective solicitors, that an order may be entered extending the time for taking proofs as follows:

The defendant to have thirty days from such order to take his proofs, & the complainant to have thirty days from the expiration of defendants' time to take his proofs in reply.

Dated Dec. 2d, 1878.

TAGGART & BOYD,
Solr's for Com'pl't.
SIMONDS & FLETCHER,
Solr's for Def't.

34 [Endorsed:] U. S. circuit court, west. dist. Mich., so. div. Chas. J. Fisher *vs.* Willibald Voss. Stipulation to extend time. Filed Dec. 3, '78. H. M. Hinsdill, clerk c't cr't. Simonds & Fletcher, solr's for def't.

35 *Orders. U. S. Court.*

THE UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 3d day of December, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and third.

Present: The Honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

In this cause, on reading and filing the stipulation between the parties thereto, by their respective attorneys, and on motion of Simonds & Fletcher, solicitors for defendant—

It is ordered that the time for taking proofs in said cause be extended as follows: The defendant to have thirty days from the date of this order to take his proofs, and the complainant to have thirty days from the expiration of defendants' time to take his proofs in reply.

Order extending time.

[Endorsed:] No. —. United States —— court, western district of Michigan, southern division. Order.

36 The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLIABLD VOSS, Defendant.

We hereby consent that an order be entered in this case substituting Edward Taggart as the solicitor of record for the said complainant in place of the undersigned.

TAGGART AND BOYD,
Sol'rs for Compl't.

Dated December 6th, 1878.

37 [Endorsed:] The circuit court of the United States for the sixth circuit and western district of Michigan, southern division. In equity. Charles J. Fisher *vs.* Willibald Voss. Stipulation for substitution of solicitors. Filed Dec. 7, '78. H. M. Hinsdill, clerk.

38 In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

On reading and filing the consent in writing of Edward Taggart, solicitor for complainant, and on motion of Taggart, Stone & Earle, ordered that Taggart, Stone & Earle be substituted in the place of Edward Taggart as solicitor for the said complainant.

TAGGARTT, STONE & EARLE,
Sol'rs for Compl't.

Feb'y 3rd, '79.

39 The Circuit Court of the United States for the Sixth Circuit & Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Compl't, *vs.* WILLIBALD VOSS, Def't.

I hereby consent that an order be entered in this case substituting Taggart, Stone & Earle as the solicitors of record for the said complainant in place of the undersigned.

EDWARD TAGGART,
Sol'r for Compl't.

Dated Jan'y 31st, 1879.

40 [Endorsed:] The circuit court of the United States for the sixth circuit and western district of Michigan. Charles J. Fisher *vs.* Willibald Voss. Stipulation for substitution of sol'rs. Filed Feb'y 3, '79. H. M. Hinsdill, clerk.

41 In the Circuit Court of the U. S. for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Compl't, *vs.* WILLIBALD VOSS, Def't.

Please take notice that this cause will be brought to a hearing on pleadings and proofs before the circuit court of the United States for the sixth circuit and west. dist. of Mich., southern div., sitting in equity, on the 15th day of September, 1879, at the opening of the court on that day, or as soon thereafter as counsel can be heard.

Dated the 4th day of September, A. D. 1879.

Yours, &c., TAGGART, STONE & EARLE,
Solicitors for Complainant.

To SIMONDS and FLETCHER,
Solicitors for Defendant.

42 STATE OF MICHIGAN, } ss:
County of Kent, }

Arthur C. Denison, being duly sworn, deposes and says: That on the 4th day of September, A. D. 1879, he served a notice of hearing, of which the within is a true and compared copy, on Simonds and Fletcher, sol'rs for the defendant in the within-entitled cause, by leaving the same with Niram A. Fletcher, one of said solicitors, personally, at their office, in said county.

ARTHUR C. DENISON.

Subscribed and sworn to before me, this 4th day of September, A. D. 1879.

R. W. POWERS,
Notary Public, Kent Co., Mich.

[Endorsed:] United States circuit court for the west. dist. of Mich., southern div. In equity. Charles J. Fisher, compl't, *vs.* Willibald Voss, def't. Notice of hearing. Taggart, Stone & Earle, solicitors for complainant. Filed Sept. 4th, 1879. H. M. Hinsdill, clerk.

43 UNITED STATES OF AMERICA:

The Circuit Court of the Mnited States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

In the above-entitled cause it is hereby stipulated and agreed by and between the solicitors for the above-named complainant and the solicitors for the above-named defendant that the two pads which are marked Exhibits "Ex" and "Ok" may be introduced in evidence by the complainant on the hearing of said cause with the

same force and effect as if they had been duly produced and offered before the examiner.

Dated Dec. 30th, 1879.

TAGGART, STONE & EARLE,
Sol'rs for Compl't.
SIMONDS & FLETCHER,
Sol'rs for Def't.

44 [Endorsed:] U. S. circuit court. In equity. Charles J. Fisher *vs.* Willibald Voss. Stipulation. Filed Jan'y 15, '80. H. M. Hinsdill, clerk. Taggart, Stone & Earl, sol'rs for comp't. Simonds & Fletcher, sol'rs for def't.

45 *Orders. U. S. Court.*

THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

Southern Division. In Equity.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 7 day of December, in the year of our Lord one thousand eight hundred and eighty, and of the Independence of the United States of America the one hundred and fifth.

Present: The Honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

On motion of Taggart, Stone & Earle—

Ordered, That the depositions on file herein be, and the same are hereby, opened.

[Endorsed:] No. —. United States ——— court, western district of Michigan, southern division. Order.

46 *Orders. U. S. Court.*

THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

Southern Division. In Equity.

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, begun and held at the city of Grand Rapids, on the 8th day of December, in the year of our Lord one thousand eight hundred and eighty, and of the independence of the United States of America the one hundred and fifth.

Present: The Honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

This day having been assigned for hearing this cause, the same came on to be heard, Messrs. Taggart, Stone & Earle appearing for complainant, and Messrs. Simonds & Fletcher for defendant; and after hearing the proofs and allegations of the parties, the court took the same into consideration.

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

At a session of said court, began and held at the city of Grand Rapids, in the year of our Lord 1881, on the 2d day of February, and of the Independence of the United States of America one hundred and fifth.

Present: The honorable Solomon L. Withey, district judge.

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

This cause having been brought to a hearing upon the pleadings and proofs therein, and having been argued by Edward Taggart, of counsel for the complainant, and E. A. West and N. A. Fletcher, of counsel for the defendant, and the court having duly considered the said pleadings, proofs, and arguments—

It is ordered, adjudged, and decreed that letters patent No. 89646, bearing date the fourth day of May, A. D. 1869, granted to
48 the said complainant, Charles J. Fisher, for an "improvement in neck-pads for horses," are a good and valid patent; that the said Charles J. Fisher was the original and first inventor of the improvement therein described and claimed, and is now the owner of the said letters patent, and of all rights thereunder; and that the said defendant has infringed upon the said patent and upon the exclusive rights of the said complainant under the same, by making and selling, and by selling, the said patented invention.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the said defendant the profits, gains, and advantages which the said defendant has received or which have arisen or accrued to him from said infringement of said patent by the manufacture or sale of the said improvements described and secured by the said letters patent No. 89646, and also such damages in addition to said profits as the complainant may have sustained by reason of such infringement.

And it is further ordered, adjudged, and decreed that the said complainant do recover of the said defendant his costs, charges, and disbursements in this suit to be taxed.

49 And it is further ordered, adjudged, and decreed that the said cause be referred to Henry M. Hinsdill, Esq., one of the masters of this court, residing in the city of Grand Rapids, to ascertain and take and state and report to the court an account of the gains, profits, and advantages which the said defendant has received or which have arisen or accrued to him from infringing the said exclusive rights of the said complainant by the manufacture and sale and by the sale of said improvements secured to the said complainant by said letters patent; and further to ascertain and report what damages in addition thereto the complainant has sustained by reason of said infringements.

And it is further ordered, adjudged, and decreed that the said complainant, on such accounting, have the right to an examination of the said defendant, *ore tenus* or otherwise, and also to the production of the books, vouchers, and documents of the said defendant, and that the defendant attend before said master, from time to time, as said master shall direct.

50 And it is further ordered, adjudged, and decreed that a perpetual injunction be issued against the said defendant enjoining him from the manufacture and sale and from the use or sale of said patented invention, according to the prayer of the bill.

Decree for injunction and order of reference to master, &c. Filed and entered Feb'y 2, 1881.

H. M. HINSDILL, *Clerk.*

51 UNITED STATES OF AMERICA, } *ss:*
Western District of Michigan, }

The President of the United States of America to Willibald Voss, his clerks, attorneys, agents, servants, and workmen, Greeting:

Whereas it has been represented to us, in our circuit court of the United States for the sixth circuit and western district of Michigan, southern division, in equity, that letters patent of the United States were issued in due form of law on the 4th day of May, A. D. 1869, to Charles J. Fisher for improvements in "neck-pads for horses," said letters patent being known and distinguished as number 89646, and that you, the said Willibald Voss, have infringed the rights secured by the aforesaid letters patent by making and selling, by using, and by selling to others the said improvements in neck-pads for horses, contrary to the form of the statute in such case made and provided:

Now, therefore, we do strictly command and perpetually enjoin you, the said Willibald Voss, your clerks, attorneys, agents, servants, and workmen, under the pains and penalties which may fall upon you and each of you in case of disobedience, that you forthwith and forever desist from making and selling, using or selling, in violation of said patent any neck-pads for horses made and manufactured substantially as described and claimed in the said letters patent.

52 To the marshal of the western district of Michigan to execute.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at Grand Rapids, this 11th day of February, in the year of our Lord one thousand eight hundred and eight-one.

[SEAL.] HENRY M. HINSDILL, *Clerk.*
By JOHN McQUEWAN, *Deputy.*

WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION, *ss:*

I hereby certify that on the 17th day of February, A. D. 1881, I served the within writ on Willibald Voss, the person within named, by delivering to him personally a true copy hereof, at Grand Rapids, with the seal of the court impressed thereon as hereon impressed.

JAMES MONROE, *U. S. Marshal.*
By HORACE TOMPKINS, *Deputy.*

Fees, $2.62.

52½ [Endorsed:] U. S. circuit court, sixth circuit, west. dist. of Mich., southern div. In equity. Charles J. Fisher, compl't, *vs.* Willibald Voss, def't. Writ of injunction. Filed Feb'y 17, '81. H. M. Hinsdill, clerk. Taggart, Stone & Earle, compl't's sol'rs.

53 *Subpœna Duces Tecum.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

The President of the United States of America to Willibald Voss:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the circuit court of the United States for the sixth circuit and western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, at the office of Henry M. Hinsdill, master in chancery of said court, in said district, on Monday, the 14th day of February, A. D. 1881, at 10 o'clock a. m. of said day, and that you bring with you and then and there produce your books of account, vouchers, and documents, and that you testify as to all matters pertaining to an accounting of the number of "neck-pads for horses" made by you in infringement of letters patent No. 89646, and the gains, profits, and advantages arising from such infringement as set forth in a decree of this court, and entered of record in a cause wherein Charles J. Fisher is complainant and Willibald Voss is defendant, on behalf of said complainant.

Hereof fail not, under the penalty of what may befall you thereon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said court, at Grand Rapids, this 10th day of February, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and fifth.

[L. S.] HENRY M. HINSDILL, *Clerk.*

53½ WESTERN DISTRICT OF MICHIGAN, *ss*:

I hereby certify and return that on the 11th day of February, A. D. 1881, I served the within writ upon the within-named Willibald Voss, at Grand Rapids, Michigan, by reading to him said writ, and by showing the seal of the court impressed thereon.

Travel, 2 miles	$0 12
Service, 1	50
Fees	62

JAMES MONROE, *U. S. Marshal.*
By RANSALAER WILLIAMS, *Dept.*

[Endorsed:] No. —. Circuit court of the United States, western district of Michigan, southern division. Charles J. Fisher, compl't, *vs.* Willibald Voss, defendant. Subpœna *duces tecum.* Filed Feb'y 14th, A. D. 1881. H. M. Hinsdill, clerk. Taggart, Stone & Earle, sol'rs for compl't.

54 *Subpœna.*

UNITED STATES OF AMERICA:

Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

The President of the United States of America to Henry Marsh, Alfred Antaya, Frederick Christianson, Frank Roetz, and George H. L. Neeper:

You are hereby commanded that, laying aside all and singular your business and excuses, you be and appear in the circuit court of the United States for the sixth circuit and western district of Michigan, at the United States court-rooms, in the city of Grand Rapids, at the office of Henry M. Hinsdill, master in chancery of said court, in said district, on Monday, the 14th day of February, A. D. 1881, at 10 o'clock a. m. of said day, then and there to testify as to all matters pertaining to an accounting of the number of "neck-pads for horses," made by Willibald Voss, in infringement of letters patent No. 89646, and the gains, profits, and advantages that have accrued to him by reason of such infringement, in a cause in which Willibald Voss is defendant, on behalf of Charles J. Fisher, complainant herein.

Hereof fail not, under the penalty of what may befall you thereon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said court, at Grand Rapids, this 11th day of February, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundred and fifth.

[L. S.] H. M. HINSDILL, *Clerk.*

54½ WESTERN DISTRICT OF MICHIGAN, *ss*:

I hereby certify and return that on the 11th day of February, A. D. 1881, I served the within writ upon the within-named Henry Marsh, Alfred Antaya, Frederick Christianson, Frank Roetz, and

on the 12th day of Feb'y served on George H. L. Neeper, by reading to each one of them said writ, and by showing the seal of the court impressed thereon.

Travel, 5 miles	$0 30
Service, 5	2 50
P'd fees to witnesses	6 40
	$9 20

JAMES MONROE, *U. S. Marshal,*
By RANSALAER WILLIAMS, *Dept.*

[Endorsed :] No. —. Circuit court of the United States, western district of Michigan, southern division. Charles J. Fisher, compl't, *vs.* Willibald Voss, def't. Subpœna. Filed Feb'y 14, A. D. 1881. H. M. Hinsdill, clerk. Taggart, Stone & Earle, sol'rs for compl't.

55 UDITED STATES OF AMERICA :

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

In the above-entitled cause it is hereby stipulated that the number of collar-pads manufactured by the defendant, which, according to the interlocutory decree heretofore rendered in said cause, are in fringemnts on the patent of the complainant, up to and including the date of this stipulation, is thirteen hundred; that the amount of profits received by defendant and the amount of damages suffered by complainant is the sum of fifty cents per dozen, that being the sum heretofore *heretofore* paid by others as a royalty for the right to manufacture the same.

56 It is further stipulated that the master to whom this cause was referred may report to the court in accordance to the facts here in agreed upon.

TAGGART, STONE & EARL,
Sol'rs for Compl't.
SIMONDS & FLETCHER,
Sol'rs for the Defendant.

57 UNITED STATES OF AMERICA :

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

I hereby fix the 14th day of February, A. D. 1881, at 10 o'clock in the forenoon of said day, and at my office, in the United States court-house, in the city of Grand Rapids, in said district, as the time and place to proceed with the testimony on the part of the complainant in the above-entitled cause, in pursuance of an order

heretofore made referring said cause to me to take and ascertain and state and report to the court an account of the gains, profits, and advantages which the said defendant has received or which have arisen or accrued to him from infringing the ex-
58 clusive rights of the said complainant to the manufacture, use, and sale of the said patented invention described in the said order of reference; and further, what damage in addition thereto the complainant has sustained by reason of said infringement.

And I hereby direct that 2 days' notice be given hereof to the defendant's solicitors.

Dated at the city of Grand Rapids, in said district, February 11th, A. D. 1881.

HENRY M. HINSDILL,
Master in Chancery in said Court.

59 Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division.

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant. } In Equity.

You will please take notice that the complainant in the above-entitled cause desires the evidence to be adduced therein to be taken orally under the seventy-eighth rule of the supreme court; and you will further take notice that by an order made in this cause by Henry M. Hinsdill, Esq., master of said court, with a copy of which order you are herewith served, the examination of the witnesses on the part of said complainant as to the matters specified in said order will take place before the said master at the office of said master in the United States court-house, in the city of Grand Rapids, in said district, on the 14th day of February, A. D. 1881, at 10 o'clock in the forenoon, and proceed as such master may direct.

Dated at Grand Rapids, Feb'y 11, 1881.

TAGGART, STONE & EARLE,
Solicitors for Complainant.

To Messrs. SIMONDS and FLETCHER,
Solicitors for Defendant.

59½ UNITED STATES OF AMERICA,
Western District of Michigan, Southern Division, } *ss:*

Arthur C. Denison, being duly sworn, deposes and says: That on the 11th day of February, 1881, he served a copy of the within order of examiner, and also the notice of which the within is a true copy, on Messrs. Simonds & Fletcher, solicitors for the defendant in the within-entitled cause, by delivering the same to and leaving the same with Omar H. Simonds personally, he being one of said solicitors.

ARTHUR C. DENISON.

Subscribed and sworn to before me, this 11th day of Feb'y, 1881.

R. W. POWERS,
Notary Public in and for Kent County, in said West. Dist. of Mich.

[Endorsed:] No. —. United States circuit court, western district of Michigan, southern division. In equity. Charles J. Fisher, complainant, *vs.* Willibald Voss, defendant. Order of examiner and notices. Taggart, Stone & Earle, solicitors for compl't. Received and filed this 12th day of February, 1881. Henry M. Hinsdill, clerk.

60 *Report of Master.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

To the honorable judges of said court:

I, Henry M. Hinsdill, master in chancery of said court, would respectfully report that this cause was referred to me on the 2d day of February, A. D. 1881, to take proofs and the testimony of witnesses to be produced herein, and report the same to the court with all convenient speed.

That on the 14th day of February, A. D. 1881, complainant appeared by Arthur C. Denison in behalf of the solicitors for complainant, defendant not appearing.

That on said 11th day of February, complainant consenting, the taking of testimony upon an accounting as to gains, profits, &c., in pursuance of the order above referred to, is hereby adjourned
61 until February 19th, 1881, at 10 a. m.

HENRY M. HINSDILL,
Master in Chancery.

FEBRUARY 19TH, 1881.

Counsel for the respective parties consenting, the taking of testimony in this cause is hereby adjourned until February 24th, 1881.

H. M. HINSDILL,
Master in Chancery.

In pursuance of a decretal order made in this cause on the 2nd day of February, A. D. 1881, by which it was referred to the undersigned to ascertain, take, state, & report to the court an account of the gains, profits, and advantages which the defendant has received, or which have arisen or accrued to him, from infringing the exclusive rights of the complainant by the manufacture, use, and sale of the improvements patented in the letters patent upon which this suit was brought, and, also, in addition to said profits, to assess the damages which the complainant has sustained by reason of
62 said infringement, and to report thereon to the court:

I, Henry M. Hinsdill, the master to whom the matter was referred, do report that from the stipulation of the parties this day filed herein and hereto attached, that the number of collar-pads made by defendant is thirteen hundred (1,300). The amount of damages suffered by complainant is the sum of fifty cents per dozen; and I

do find that the sum of fifty-four & $\frac{17}{100}$ dollars ($54.17) damages have been proven to have been sustained by complainant by reason of said infringement.

HENRY M. HINSDILL,
Master in Chancery.

Dated February 24th, A. D. 1881.

63 [Endorsed:] No. 387. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. Charles J. Fisher, compl't, *vs.* Willibald Voss, defendant. Report of Henry M. Hinsdill, master. Filed Feb'y 24th, 1881. H. M. Hinsdill, clerk.

64 UNITED STATES OF AMERICA, }
Western District of Michigan, Southern Division, } *ss:*

At a session of the circuit court of the United States for the sixth circuit and western district of Michigan, began and held at the city of Grand Rapids on the 24th day of February, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States of America the one hundredth and fifth.

Present: The Honorable Solomon L. Withey, district judge.

Among the proceedings then and there had were the following, to wit:

CHARLES J. FISHER, Complainant, }
vs. } In Equity.
WILLIBALD VOSS, Defendant. }

This cause having been referred to Henry M. Hinsdill, Esq., one of the masters of this court, to take and ascertain and state and report to the court on account of the gains, profits, and advantages which the said defendant has derived or received, or which
65 have arisen or accrued to him from infringing the exclusive rights of the said complainant by the manufacture, use, and sale of the said improvements, patented as alleged in said bill of complaint, and also to ascertain and report the amount of damages which the said complainant has thereby suffered; and the said master having reported as due complainant therefor the sum of fifty-four and $\frac{17}{100}$ dollars:

It is therefore ordered, adjudged, and decreed that the complainant have judgment against the defendant for such sum on final decree, together with his costs in this suit, to be taxed, and complainant have execution therefor.

Final decree. Filed and entered February 24, 1881.

H. M. HINSDILL, *Clerk.*

66 *Taxed Bill of Costs.*

UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

Complainant's bill of costs.

Solicitors fee by statute	$20 00
Marshal's fees on service of subpœnas	3 42
" " " " " injunction	2 62
Clerk's fees	18 25
Examiner or com'r's fees (Charles A. Renwick, special examiner)	39 50
Master's fees on accounting	7 50
Printer's bill, (not included in above.)	
Register of deeds, (not included in above.)	

Witnesses' fees:

	Miles travel.	Days.		
Henry Marsh	2	2	$3 20	
Charles J. Kruger	1	1	1 60	
Franklin Mattison	1	1	1 60	
Alfred Antaya	1	1	1 60	
Frederick Christianson	1	1	1 60	
Frank Roetz	1	1	1 60	
George H. L. Neeper	1	1	1 60	
				12 80
Affidavit to fee bill				25
Total				$104 34

THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Southern Division, }

I hereby tax the foregoing bill of costs at the sum of one hundred four and $\frac{34}{100}$ dollars.

Dated March 10, 1881. H. M. HINSDILL, *Clerk.*

67 THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Southern Division, }

Edward Taggart, being duly sworn, says: That the foregoing items of cost charged as disbursements have actually been paid, or the liability therefor incurred, and were necessary and are reasonable in amount; that the witnesses above named were in good faith made to attend, and were deemed material and necessary, and they respectively traveled the number of miles, and actually attended the number of days specified, and that the copies and exemplifications charged for were actually and necessarily used, or necessarily and in good faith obtained for use.

EDWARD TAGGART.

Sworn to and subscribed before me, this 7th day of March, A. D. 1881.

REUBEN W. POWERS,
Notary Public, Kent County, Mich.

To Messrs. SIMONDS & FLETCHER, Solicitors for Defendant:

Take notice that the foregoing is a copy of the complainant's bill of costs, proposed to be taxed, and of the affidavits to be read in support thereof; and that application will be made to the clerk of the said court to tax the same, at his office, on the 10th day of March, A. D. 1881, at 10 o'clock a. m.

Dated this 7th day of March, A. D. 1881.

TAGGART, STONE & EARLE,
Solicitors for the Complainant.

We consent to the taxation of the within bill of costs at the sum of one hundred four dollars and thirty-four cents.

Dated this 9th day of March, A. D. 1881.

SIMONDS & FLETCHER,
Sol'rs for Deft.

[Endorsed:] No. —. Circuit court of the United States for the sixth circuit and western district of Michigan, southern division. In equity. Charles J. Fisher *vs.* Willibald Voss. Taxed bill of costs. Complainant's costs taxed at $104.34. Filed March 10, A. D. 1881. H. M. Hinsdill, clerk. Taggart, Stone & Earle, solicitors for compl't.

68 Department of the Interior, United States Patent Office.

(Vignette.)

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted C. J. Fisher, May 4th, 1869, No 89646, for improved neck-pad for horses.

In testimony whereof, I, V. D. Stockbridge, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this fifth day of May, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

[SEAL.] V. D. STOCKBRIDGE,
Acting Commissioner.

69 EXHIBIT A .COMPLAINANT'S PROOFS.—CHARLES A. RENWICK, *Special Examiner.*

No. 89646.

The United States of America to all to whom these letters patent shall come:

Whereas C. J. Fisher, of Waukon, Iowa, has alleged that he has invented a new and useful improved neck-pad for horses, and has made oath that he is a citizen of the United States; that he verily

C. I. Fisher.

Horse Collar

No. 89,646. Patented May 4, 1869.

C. I. Fisher. Neck pad for horses.

Fig. 1.

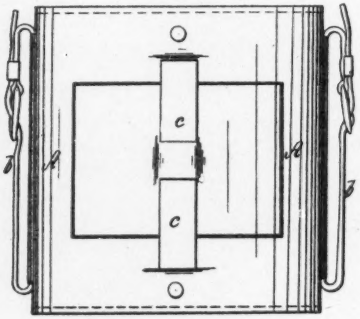
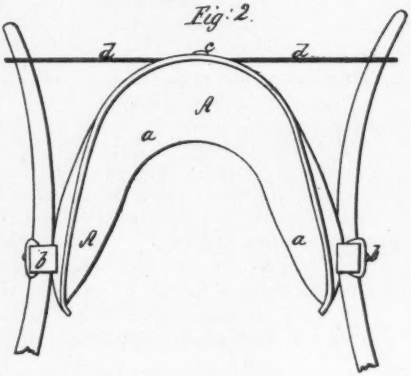


Fig. 2.



No. 161. Does 6,140 vs Fisher.

Witnesses,
Wm. A. Wagner
John F. Dowty

Inventor,
C. I. Fisher.
per Munn & Co
Attorneys

believes he is the original and first inventor or discoverer of the said invention, and that the same hath not to his knowledge and belief been previously known or used, has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petitian to the Commissioner of Patents praying that a patent may be issued therefor :

These are therefore to grant to the said C. J. Fisher, his executors, administrators, or assigns, for the term of seventeen years from the fourth day of May, one thousand eight hundred and sixty-nine, the full and exclusive right and liberty of making, using, and vending to others to be used, the said invention, description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

Given under my hand, at the city of Washington, this fourth day of May, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third

[SEAL.] W. T. OTTO.

Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

SAM'L S. FISHER,

Commissioner of Patents.

(Here follows diagram, marked p. 70.)

71 UNITED STATES PATENT OFFICE.

C. J. FISHER, of Waukon, Iowa.

Letters Patent No. 89,646, dated May 4, 1869.

Improved Neck-Pad for Horses.

The schedule referred to in these letters patent and making part of the same.

To all whom it may concern :

Be it known that I, C. J. Fisher, of Waukon, in the county of Allamakee, and State of Iowa, have invented a new and improved Neck-Pad for horses; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to tne accompanying drawings forming part of this specification, in which—

Figure 1 represents a plan or top view of my improved neck-pad ; and

Figure 2 is an edge view of the same.

Similar letters of reference indicate corresponding parts.

This invention relates to a new device for protecting the necks of horses between the upper ends of the collar to prevent galling. For this purpose pieces of leather, cloth, or other material have heretofore been used, but without the desired success. Pads could not be made, as their inner faces could not be kept clear from wrinkles or

protuberances, which are more injurious than the omission of a protecting device.

My invention consists in producing a pad which may be attached to the collar, and which is perfectly smooth on the under side, the leather used on the under side being crimped in order to obtain the desired shape.

A, in the drawing, represents the pad. It is so shaped that it fits a horse's neck between the arms of the collar, it being thick on top and tapering toward the ends, as is clearly shown in Fig. 2.

The under side of the pad is formed by a sheet of leather *a*, which is crimped in order to have its ends turned up without producing wrinkles; the stuffing in the pad is of hay, or any other suitable material.

On the outer side of the pad, near the ends of the same, are straps, *b b*, which are fitted around the collar as indicated in Fig. 2, to prevent longitudinal displacement of the pad.

On top of the pad is arrrnged a strap *c*, under which the end straps *d d* of the collar may be passed, as in Fig. 2, to prevent upward displacement of the pad.

I claim as new, and desire to secure by letters patent, as an article of manufacture—

The neck-pad, having lining of crimped leather, and provided with straps *b c*, to allow its being fastened to the collar, as herein shown and described for the purpose specified.

C. J. FISHER.

Witnesses:
L. O. BEARCE.
A. J. RODGERS.

72 U. S. Circuit C't, West. Dist. Mich. In Equity.

FISHER *vs.* VOSS.

Complainant's Testimony in Chief.

73 In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLIBALD VOSS, Defendant.

In the above-entitled cause it is hereby stipulated by and between the respective parties hereto by their respective solicitors that Charles A. Renwick, Esq., be appointed special examiner to take the testimony of witnesses to be produced by the parties hereto before him, to be used on the trial of this cause, and that the complainant have twenty days within which to take his evidence in support of his bill, and the defendant forty-five days thereafter within which to take his evidence in defense, and the complainant twenty-five days thereafter within which to take his evidence in reply.

TAGGERT & BOYD,
Sol'rs for Complainant.
SIMONDS & FLETCHER,
Sol'rs for Defendant.

74 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

CHARLES J. FISHER, Complainant, — WILLIBALD VOSS, Defendant.

Deposition of witnesses produced, sworn, and examined in the above-entitled cause on the part and behalf of the complainant, in pursuance of the stipulation, a copy of which is hereto attached and the order based thereon, and the notice of taking depositions hereto attached, at the office of Taggert & Boyd, in the city of Grand Rapids, on Monday, the 23rd day of September, A. D. 1878.

The complainant appeared by Edward Taggert, his counsel; the defendant appeared by Niram A. Fletcher, his counsel.

Examination of witnesses adjourned until Tuesday, September 24th, 1878, at 10 a. m., at same place.

TUESDAY, *September 24th*, A. D. 1878, at 10 a. m.

CHARLES J. FISHER, a witness on behalf of the complainant, being duly sworn and examined, testifies as follows:

My name is Charles J. Fisher. My age is fifty years. I reside in the city of Grand Rapids. I am a manufacturer of collar-pads. I have been engaged in the harness and saddlery business. I have followed the business in the neighborhood of thirty years. I commenced to manufacture collar-pads in 1868. I resided at that time in Allamakee county, Iowa.

75 Q. Describe the collar pad that you then commenced to manufacture?

A. The pad with the inner lining of leather was formed up free from wrinkles on the under side.

Q. State whether or not you made an application and obtained a patent on a collar pad?

A. I did.

Q. Will you examine this paper (handing him paper) and state what it is?

A. This is letters patent which I received from the United States for collar pad.

Mr. Taggert, counsel for complainant, now offers in evidence letters patent of the United States No. 89646, granted to Charles J. Fisher for improvements in neck pads for horses, and the same is marked Exhibit A, Complainant's Proof, and attached hereto.

Q. Please examine the sample of collar pad I now offer you and state whose it is.

A. This is one of my own manufacture.

Q. State whether it is manufactured in accordance with your patent or not.

A. I believe it is.

Counsel for complainant now offers in evidence the collar pad referred to in the last two questions and answers, and the same is marked Exhibit B, Complainant's Proofs.

Q. Please examine the collar pad I now offer you and state what it is (Exhibit C).

A. This is a collar pad which I claim infringes my right; it goes by the name of the sole-leather collar pad.

76 Q. Do you know by whom it is manufactured?

A. It is manufactured by the Union Sole-Leather Collar Pad Company of Chicago.

Counsel for complainant now offers in evidence the collar pad last referred to.

Solicitor for defendant objects to the offering in evidence of the collar pad as irrelevant and immaterial.

The collar pad last mentioned is now marked Exhibit C, Complainant's Proofs.

Q. Please examine the collar pad which I now show you and state whose manufacture it is, if you know.

A. I believe [it] to be of the manufacture of Voss, the defendant (Exhibit D).

Counsel for complainant now offers in evidence the collar pad last mentioned, and the same is received and marked Exhibit D, Complainant's Proof. Objected to by defendant's counsel [as] immaterial and irrelevant.

Q. State whether or not you ever saw or heard of a collar pad constructed similar to Exhibit B prior to the invention by yourself.

A. No, sir.

Q. State whether or not, from your business and experience, you would have been likely to have known if there had been such a collar pad in existance.

A. I think I should, from being in different parts of the United States and being engaged in that business.

Q. State whether or not your invention possesses utility.

A. I should say it did.

Q. What are its advantages?

77 A. It presents a smooth surface which prevents chafing and cutting the hair; it protects the neck from its peculiar construction, and preserves the neck from hame and galling.

Q. Please to describe the construction of your collar pad.

A. There is an inner lining of crimped leather, thicker in the middle than at the ends; the inner lining is made damp and put in a press over a form, and then it is finished off and the straps put on.

Q. State whether or not a person familiar with the business of making pads could manufacture one of your pads from the description given in your specification?

A. Yes, sir; I think they could.

Q. Do you still own this patent?

A. Yes, sir; nearly all of it; I am not in possession of the right for all the States; there is a little of it sold.

Q. State what parts are sold.

A. Iowa, Wisconsin, and I believe it is Cass county in this State.

Q. Do you own the balance of the United States?

A. Yes, sir.

Q. State whether or not after you received your patent you proceeded to manufacture and put upon the market pads constructed in accordance with your invention?

A. I have.

Q. How soon after the obtaining the letters patent did you commence to manufacture?

A. Immediately; I was manufacturing when the patent was issued.

Q. State whether or not you have continued to manufacture from that time down to the present?

A. I have; there have been slight intervals, but not to amount to anything; I have always had material on hand to manufacture from.

78 Q. Are you acquainted with the defendant in this suit?

A. Yes.

Examination adjourned until 1.30 p. m.

One o'clock & thirty minutes, September 24th, A. D. 1878. Examination resumed.

Q. State what, if anything, you know about his manufacturing a collar pad which is an infringement of your patent?

Objected to; incompetent.

A. He has admitted to me that he has manufactured them, and I have seen his press.

Q. When and where did you see his press?

A. Last fall, in his shop.

Q. State whether or not at that time, or at any other time, you saw him have on hand a quantity of collar pads manufactured substantially like yours?

A. I have at different times.

Q. Give the dates as near as you can.

A. Sometime last October, as near as I can recollect, and at different times since.

Q. About how many did you see there in October last?

A. About half a dozen; I am not sure.

Q. What conversation or conversations have you had with him in reference to his manufacturing collar pads?

A. That I considered it an infringement, and that as soon as [I] could I would attend to the matter.

Q. What statement did he make in regard to the purpose of manfacturing the collar pad which you saw in his shop?

79 A. That he was building up a heavy trade by making them and putting them in his collar.

Q. How did the pads which you saw there compare with the one which is offered in evidence, marked "Exhibit D"?

A. They compared very well with that; they were manufactured like that substantially.

Q. State what you know, if anything, about the defendant's having for sale and selling collar-pads similar to "Exhibit C".

A. I have seen a lot of them there on his shelves; he has admitted that he is selling them.

Q. What experience have you had in inventing and taking out letters patent?

A. I have taken out five.

Q. What is the net profit on the collar-pads invented by you?

A. In the neighborhood of a shilling for a single pad.

Q. What is the difference between the cost price of manufacturing a pad and the retail price of the same?

A. In the neighborhood of twenty cents, as near as I can judge.

Q. What effect has the manufacture and sale by defendant and others had upon your business of manufacturing and selling collar-pads?

A. The effect is that every time they sell one of those, it throws me out of the sale of each.

On cross-examination witness says:

Q. Previous to the time when you began to manufacture such a pad as is described in your patent, what device, if any, was in common use among harnese makers to prevent the galling of the horse's neck by the collar?

80 A. There were several things in use; one was a plain piece of leather stitched under the top of the collar; another, cloth or leather, two thicknesses laid together and stuffed and tufted; a piece of sheepskin with the wool on was sometimes used.

Q. Were any of these devices provided with straps to fasten it to the collar, and have you ever seen straps used for that purpose before you used them on your own patent?

A. I have seen them used; I used them myself.

Q. Had you ever seen straps used in that way to a single piece of leather placed at the top of the collars?

A. Sometimes one strap, and sometimes two straps; I have seen them attached to a single piece of leather.

Q. The devices which you have described as being the ones being commonly in use before the invention of your pad, and provided with one or more straps, had been in general use among harness makers for at least eight or ten years before the invention of your pad?

A. So far as I know they had been in general use.

Q. One of those devices was tufted pads, was it not?

Q. One of them was tufted or quilted, yes, sir.

Q. What defect was there in the devices commonly in use which you sought to overcome in the pad which you patented?

A. That they were not substautial enough. The buckles or straps on top of the collar would bruise through and make a lump or protuberance on the under side; another, with the common devices used before mine, they would cut the main, shave the neck, the edges sticking out too straight.

Q. In what way did you, in your pad, overcome the defect of the want of substantiality in the devices in common use?

A. By adding more than one sheet of leather of any suitable material.

81 Q. Did you not make your pad, upon which you obtained a patent, of two pieces of leather fastened together at the edges, and stuffed with leather or other suitable material in order to make a thick covering immediately over the neck?

A. I made it of sufficient substance to protect the neck.

Q. How do you overcome the defect of the buckles of the collar protruding through the pad, and hurting the neck of the horse in your pad?

A. By adding to this crimped sheet of leather a sufficiency to prevent it.

Q. Did you know that this was a useful article of manufacture when you obtained your patent—when you applied for a patent?

A. I suppose it was or I should not have expended my money.

Q. Had you experimented on it at all when you applied for a patent?

A. Yes, sir; I had quite a number in use.

Q. How long had you experimented on it?

A. From the latter part of the summer of '68.

Q. What meaning do you attach to the word "crimped" in your application for this patent?

A. Just what that word expresses.

Q. How do you crimp leather, Mr. Fisher?

A. By forging it out of its natural shape and making it stay in the form that I desire.

Q. A piece of leather like "Exhibit D" could be crimped with its edges down, as well as up, could it not?

A. I suppose it could.

Q. Do you not understand the word "crimping," as used among workers in leather, to mean putting the leather through a process which will compel it to remain in some shape different from its common shape?

82 A. Not every time.

Q. Is that the usual meaning attached to the word?

A. It is owing to circumstances. If you take a straight strap and bend it in a semicircle it is not crimped.

Q. What do you understand by the word "crimped," as used among workers in leather?

A. Forcing it up to some particular form or shape like "Exhibit B," or either of these exhibits.

Q. Doesn't it mean something more than simply putting the leather in some other form than its common form?

A. I don't understand it. It may be plain enough, but I can't see it.

Q. If a single piece of leather like "Exhibit E" had its edges turned up, by hand, into the shape in which they now are, and nothing was done to them, would they remain in that condition?

A. Not if they met with much resistence.

Q. Is there any process through which they could be put, which would give them a tendency to remain as they now are?

A. Yes, sir.

Q. What is the process?

A. Forcing it into molds or dies will cause it to remain.

Q. Are there any other parts of the harness that are crimped besides the pad to the neck?

A. Sometimes.

Q. What parts are they that are sometimes crimped?

A. The back pad, or the pad, as it is called, are sometimes crimped in some harnesses.

Q. Are there any other parts that are sometimes crimped, and what are they?

A. I guess that is sufficient.

83 Q. When you crimp the back band of a harness, do you simply put the leather on a form and leave it there until it assumes the shape which you wish it to have?

A. I have never crimped any back-pads for harnesses that I remember of.

Q. Have you ever seen any crimped?

A. Yes, sir.

Q. How was it done?

A. By placing the piece of leather to be crimped into the dies or forms with force sufficient to make it take the shape of the forms or dies.

Q. Did you ever see a shoemaker crimp a pair of boots?

A. Yes, sir.

Q. Do you know what the object of crimping a boot is?

(Complainant objects, as a vain repetition.)

A. To put it in a desired shape.

Q. Is the leather in being crimped not subjected to a process which gives it a tendency to remain in the condition or shape in which the workman wishes it?

A. Certainly.

Q. Is it not common to soak the leather thoroughly before it is put in the dies?

A. Generally so, I believe, but not necessary in all cases.

Q. Is not leather frequently crimped by being placed while it is in a wet and pliable condition on a form, and subjected to rubbing by a smooth hard substance?

A. Shoemakers crimp in that way, often.

Q. Did you ever see a harness-maker crimp it in that way?

A. I don't call to mind any instance just now.

84 Q. Prior to the time when you invented this patent, had you ever seen devices used for protecting a horse's neck made with two or more thicknesses of leather, but with the inner lining not crimped?

A. Yes, sir; I made some.

Q. Had you seen pads made in that way, which were made by others?

A. Not except the tufted pads.

Q. In your application you say, in referring to the devices previously in use, "pads could not be made, as their inner faces could not be kept clear from wrinkles or protuberances." To what pads did you then refer, the single pieces of leather or the quilted or tufted pads?

A. To both.

Q. Did the single pieces of leather have a tendency to have protuberances on them?

A. They did.

Q. From the buckles of the collar?

A. From the buckles of the collar, or the hame strap.

Q. What is there that would prevent "Exhibit D" from having on its under side protuberances caused by the buckles of the collar or hame strap?

A. The plate on it would prevent it.

Q. Did the devices, or any of them, which you say were in use prior to the time you obtained your patent have the edges of the sides at all turned up?

A. Not in any substantial way, nor crimped, nor forced up; I never knew anything crimped or forced up.

Q. Were they or any of them turned up at all?

A. I have seen them turned up with the hand, but were never turned up with any dies or forms in any substantial manner before I done it.

85 Q. In what way were they made to retain the turned-up shape?

A. By shaving the edges thin. When they were on the collar they would pull it around the collar with their fingers.

Q. Did you know of any being soaked in water before having the edges turned?

A. Yes, sir.

Q. Did you ever know of any, while the leather was in a wet condition, and after the edge had been turned, being rubbed with a smooth stick to preserve the shape?

A. I can say that I do.

Q. Did you know of anything being done besides turning the edges by hand?

A. Yes, sir; I have known them to take a knife and cut the edges and turn them up.

Q. Have you, since your patent was issued, manufactured any pads under the patent which have consisted of a single piece of leather aside from the straps?

A. No, sir; not that I remember of.

Q. Did you not, after you invented your pad and obtained your patent on it, contemplate making pads which should consist of two or more pieces of leather with some stuffing between them of suitable material?

A. I contemplated making a pad with a crimped inner lining, that supported in shape by any suitable material.

Q. Do you not, in your specification, describe the manner in which they are manufactured?

(Complainant's counsel objects to question as incompetent, the specification being the best evidence.)

A. I have; my last answer answered this.

Q. Can you make a collar-pad in the manner described in
86 your specification of a single piece of the leather aside from the strap?

A. I think not.

Q. Why not?

A. Because it is necessary to have more than a single piece of leather to constitute more than the plain leathers used with collars before my patent.

Q. Do you say that "Exhibit D" is manufactured in the manner described in the specifications to your patent?

A. It is substantially the same.

Q. What part of "Exhibit D" is the stuffing which you mention in your specification?

A. The stay or plate on the top of the pad is substantially the same.

Q. Which is the inner lining of "Exhibit D"?

A. The part that comes in contact with the neck.

Q. What part of "Exhibit D" corresponds to the outer covering of your pad?

A. The metal-ic part corresponds to the outer lining, in which I say any suitable material.

Q. You say that the defects in previous devices which you sought to overcome by your patent were a lack of substantiality and the protuberances caused by buckles, which hurt the horse's neck, and the straight edges, which wore the mane. Does it now occur to you on reflection that there were any others?

A. I can't call anything to memory now.

Q. You have overcame the defect of lack of substantiality by building a heavy, strong pad, did you not?

A. Sufficient to overcome the defect.

87 Q. You overcame the defect from the protuberances by having two pieces of leather with a stuffing between them, did you not?

A. I have overcome the defect in different ways.

Q. State the different ways in which you prevented the protuberances from the buckles hurting the neck.

A. Sometimes by a second piece of leather; other times iron; sometimes more leather.

Q. Well, when you used all leather, how did you construct your pad?

A. I made a form of leather, with the inner lining in accordance with the claim of my patent.

Q. Did it have an outer covering and an inner lining?

A. It had an outer form and inner lining—a form, or cover, or whatever is on top then.

Q. What was it stuffed with—the pad made all of the leather?
A. With leather.
Q. When did you use iron, or begin to use it at all?
A. I believe it was in '72 or '73.
Q. Did you test them with iron before you applied for a patent?
A. I made one of iron.
Q. In what manner did you use, or attempt to use, iron as a stuffing or substance to go between the inner and outer lining, or how did you use it?
A. I tried it different ways.
Q. In what manner did you do it?
A. After the style of "Exhibit D," for one, and after the style of "Exhibit B," with a covering over the metal, and stitched in.

88 Q. Did you use, or attempt to use, it in either of those ways prior to the time of applying for your patent? If so, which one?

A. Stitched in, prior to the time of applying for a patent, and since.
Q. What opinion did you form of the merits of iron as a suitable covering for the inner lining of the pad?
A. I did not wish to adopt it. It did not suit me.
Q. Did you ever authorize Mr. C. J. Kruger, of this city, or any firm with which he was connected, to manufacture and sell pads under your patent?

(Complainant's counsel objects. Not proper cross-examination, and immaterial.)

A. I did.
Q. What firm was it?
A. C. J. Kruger & Co.
Q. Was Mr. J. H. Smith, of this city, a member of that firm at that time?

(Complainant's counsel objects. Not proper cross-examination, irrelevant, and immaterial.)

A. He was.
Q. What territory did you let C. J. Kruger & Co. have?

(Compl's counsel objects, same as last above.)

A. I could not state without referring to the papers.
Q. Have you the papers in your possession?

(Compl's counsel objects, same as above.)

A. I have; I believe I have.
Q. How long did they continue selling your pads?

(Compl's counsel objects, same as above.)

A. As long as the firm lasted after I commenced here, and Mr. Smith has them for sale now.
Q. Was not your idea, in making arrangement with C. J. Kruger & Co., to give you pads an extensive sale through them?

89 (Compl't's counsel objects, same as above.)

A. It was.

Q. Were they not substantially driven out of the market by what was known as the zinc collar-pad?

(Same objection.)

A. I never understood it so.

(Further examination adjourned to September 26th, A. D. 1878, at 9 o'clock a. m.)

SEPTEMBER 26TH, A. D. 1878—9 a. m.

Q. How many of your pads did C. J. Kruger & Company sell?

(Same objection.)

A. I am unable to say without going to quite a research.

Q. What did you understand to be their reason for giving up the business?

(Same objection.)

A. That the zinc pad made opposition in the field, and Mr. Kruger seemed to want the entire sale of everything of the kind in market, and did not manufacture them as rapidly as I thought he should; I proposed to him to take up the contract or lease and buy him out; he consented, and the contracts were all taken up.

Q. Do you swear that C. J. Kruger & Co. were not unable, in handling your pad, to compete in the market with what was known as the zinc collar-pad?

(Same objection.)

A. They wished to sell both, as I understood it.

Q. Do you know what the zinc collar pad usually retails for?

(Same objection.)

90 A. I cannot say.

Q. What is the retail price of a pad manufactured like Exhibit B?

(Same objection.)

A. About half a dollar.

On redirect examination witness says:

Q. Please to explain more fully the difference between the construction of your collar-pad having a crimped inner lining and the collar-pad in use prior to the time you made your invention.

A. The difference is, I use in constructing my collar-pad dies or forms for forcing or shaping the inner lining in such a manner as to retain the desired shape, adding something in shape of suitable material to assist in keeping it or retaining it in that form. To crimp or form leather up in any substantial manner, it is necessary, usually, to make it wet and compel it to take the desired form; the one in use prior to my invention was not, to my knowledge, ever subjected to any dies or forms or machinery to cause them to have that desired shape.

Q. Examine the pad in the collar now shown you, and state whether or not it is a fair sample of the pads in use prior to the date of your invention, Exhibit E.

A. It is.

Q. How does it differ from your pad in reference to its inner lining?

A. In that it is not crimped in a special manner; it is not substantial, being simply a plain piece of leather, easily put in any shape, rendering it unfit for the purpose; to make it of heavy solid leather the edges would cut the mane, chafe the neck; to make it of thinner or softer leather, so that the edges might be turned
91 up, renders it insufficient for the purpose, there never being in use any crimps, forms, or dies usually used to make the pads; they used leather that could be turned up at the edges with the finger or hand about as in the one I now hold, Exhibit E.

Complainant's solicitor now offers in evidence the collar mentioned above, and the same is received and marked Exhibit E, Complainant's Proofs.

On recross-examination witness says:

Q. Do you understand, then, Mr. Fisher, that one of the improvements you introduced into the manufacture of pads by your patent was the use of dies, blocks, or other implements or machinery, by which you could force a heavy piece of leather or several thicknesses of leather into the desired shape?

A. The improvement that I made was crimping or forming the leather by the use of dies or suitable machinery for the purpose.

Q. Do you mean to say that previous to the time you invented your pad, pads had been crimped, but that they had not been crimped by the use of dies or forms or other implements of that character?

A. I mean to say they (pads) had not been crimped in accordance with my patent, or without dies or forms, or any machinery for that use.

Q. Do you mean to say that they had not been crimped at all prior to the time you invented your pad?

A. I know of none being crimped in the manner specified in my patent.

Q. I do not ask whether they had been crimped in the manner specified in your patent before you invented it, but whether they had been crimped in any way at all?

A. Not in any substantial manner.

(Further examination adjourned until 2 p. m., September 26th.)

92 SEPTEMBER 26TH, 1878—2 p. m.

Q. Who manufactured the pad attached to Exhibit E?

A. Mr. Marsh.

CHARLES P. FISHER.

Read over to witness, and by him subscribed in my presence, this 26th day of September, A. D. 1878.

CHARLES A. RENWICK,
Special Examiner.

HENRY MARSH, a witness produced on behalf of the complainant, being duly sworn and examined, says:

My name is Henry Marsh; I reside in the township of Grand Rapids, Kent county, Michigan; I am forty-five years of age; I am a manufacturer of horse-collars.

Q. How long have you been engaged in the manufacture of horse-collars, and where have you been so engaged?

A. I learned my trade in New York city, worked at it there, and at Newark, New Jersey, Detroit, Michigan, and at Grand Rapids. I have been engaged at the trade over twenty years.

Q. How long have you worked at your business in Grand Rapids?

A. I came here in '65 and worked here till '68, and went to Detroit and worked nearly two years there, and came back to the Rapids, and have been here since.

Q. Are you acquainted with the parties to this suit?

A. Yes, sir.

Q. How long have you been acquainted with them?

A. About eight years; in the neighborhood of eight years.

Q. With whom have you been engaged at work in the city of Grand Rapids?

A. Messrs. Kruger & Booth first; then for Mr. Brown &
93 Smith or Brown & Co.; and then I manufactured for myself to sell.

Q. State what you know, if anything, concerning the manfacture of collar-pads, similar to Exhibit D, by defendant.

A. I worked for Mr. Voss and I saw him manufacturing those kind of pads.

Q. When did you first know of his manufacturing that kind of pads?

A. It was three years ago this coming fall—quite late in the fall.

Q. How long did he continue to manufacture them within your knowledge?

A. It was along about in May, 1878, that I quit working for him, and he was manufacturing them then.

Q. What means, if any, had you of knowing about how many he was manufacturing per week during that time?

A. I made all the collars, or nearly all the collars that were made; the pads were supposed to go on all the collars I made; that is, that was the calculation.

Q. About how many collars were you manufacturing per week during the time you worked for him?

A. I couldn't say exactly the amount; I could tell by looking over the books of Mr. Voss, when he took my book-account.

Q. Can you tell about the amount?

A. I should say about a dozen a week; it may be a little more, and it may be a little less; I should say just about a dozen per week.

A. What, if anything, do you know about Mr. Voss keeping on hand and selling collar-pads of the description shown by Exhibit C, commonly called the sole-leather pads?

A. I have seen them laying on the shelf, and on the bench in the sale-room.

Q. State whether or not they were kept on sale during the time you were there?

94 A. I don't remember seeing them sold at all; I saw them laying there.

Q. In what quantities did you see them there?

A. Sometimes two or three, sometimes half a dozen.

Q. Have you ever examined the collar-pad known as the Fisher Pad, which has been marked Exhibit B?

A. Yes, sir.

Q. State whether or not, in your opinion, the collar-pads which I show you, marked Exhibit B, Exhibit C, and Exhibit D, are substantially the same in construction, and to be used for the same purpose?

(Counsel for defendant objects to the question, so far as it calls for testimony concerning the identity of purpose of the several pads, as immaterial and irrelevant.)

A. They are formed up, I should judge, as near alike as you could get at it, and they answer the same use.

On cross-examination witness says:

Q. Explain more fully what you mean by saying that the pads are formed up alike.

A. The leather wet and put into a press, and formed up through the press.

Q. Do you mean that the pads are put through the same process to put them in the form in which they now appear?

A. Yes.

Q. Do you notice any similarity between "Exhibit B" and "Exhibit D," other than that they have been put through the same process to get their edges in the form they now appear?

A. Nothing more than that "Exhibit D" is skived before

95 being pressed, and "Exhibit B" is skived afterwards.

Q. Have you ever made any pads like Exhibit B?

A. No, sir.

Q. Do you notice any difference in the thickness of the two pads, at the centre of the pad?

A. Yes, sir.

Q. Which is the thicker of the two?

A. "Exhibit B"?

Q. Do you know in what manner Fisher makes his pad thick at the centre and thin at the ends and edges?

A. Yes, sir; he fills them up; he may put a thick piece of leather or pieces, whichever he wants to.

Q. In your judgment as a harness-maker, do "Exhibits C" and "D" infringe on Mr. Fisher's patent?

A. Yes, sir.

Q. What is there in their make-up which causes them to be an infringement on Fisher's?

A. Because they are pressed with a piece of iron on top, which holds them stiff so that they cannot wrinkle underneath; and also the strap of the collar when it is buckled up would hurt the horse's neck if the plate was not under them.

Q. Does not Fisher, in his patent, take a different method from Voss and the Sole Leather Company of making the pad so that the buckles from the collar will not make lumps on the inner side of the pad?

A. That is what the iron is, I suppose, for; so that the lumps wont be made. He (Fisher) makes his thicker.

Q. In what respect is the pad made, according to Fisher's patent, an improvement on the old-fashioned pad, such as is shown on "Exhibit E"?

96 A. Because it is pressed, formed up, so as to not wrinkle; and also made thick enough so the strap wont hurt the horse's neck on the top.

Q. Is the pad on "Exhibit E" a sample of the pads which were in common use before Fisher obtained his patent?

A. Yes, sir.

Q. Had you ever seen any other pads in use among harness-makers before his patent?

A. I don't remember of seeing anything unless it was cloth pads tufted to form it up, so that it would not wrinkle to hurt the horse's neck.

Q. When a collar is made like "Exhibit E," is there any danger of the buckle hurting the horse's neck, even though such a pad is used as is on "Exhibit E"?

A. When it gets in a heavy rain and gets wet it will; that's what teamsters complain to me. I have often heard them complain of that.

Q. What is the process called by which the edges of the sides of the pads are made to turn up?

A. Pressed or crimped.

Q. Whether you have ever seen collar-pads with the sides turned up before 1869?

A. I have seen the sides turned up with the bands and straps sewed on to keep them up.

Q. Have you never known of the leather being wet and rubbed and worked with some hard smooth stick or other instrument in order to make it keep the shape for some time?

A. Not on collar-pads until after the pads are put on, then the edges were turned up with the hand and rubbed up with a hammer handle, or anything, so that the edges will stay up from hurting the horses.

97 Q. Should you call the process you have just described crimping the collar pad?

A. No; I should not.

Q. Do you think "Exhibit D" has been crimped?

A. Well, it has been crimped, or pressed; whatever you may call it.

Q. What process has "Exhibit D" been subjected to in order to put it in the shape in which it now is?

A. The leather has been put on a form and power applied to it to press it or form it up in that shape.
Q. State how leather is usually crimped.
A. They make it wet and put it in a press.
Q. Did you ever see a shoemaker crimp a pair of boots?
A. Not that I know of.
Q. Do you know how they do crimp them?
A. No, sir; not particularly.

On redirect examination witness says:

Q. Supposing the collar, "Exhibit E," should be let out at the top, would the collar-pad which is now in it protect the horse's neck from the strap which is across the top of the collar?
A. Not when it gets wet and soft.

HENRY MARSH.

Read over to witness and subscribed by him in my presence, this 26th day of September, A. D. 1878.

CHARLES A. RENWICK,
Special Examiner.

98 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLABALD VOSS, Defendant.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I, Charles A. Renwick, the special examiner heretofore appointed in this suit, do hereby certify that the foregoing are the proofs taken and the depositions of Charles J. Fisher and Henry Marsh, witnesses produced before me in behalf of said complainant, and taken, commencing on the 23rd day of September, A. D. 1878, at 10 o'clock a. m.; that said witnesses were first duly sworn by me to testify the truth, the whole truth, and nothing but the truth, in relation to said suit; that the examination of said witnesses was reduced to writing by me, and by me read over to said witnesses, and by said witnesses subscribed in my presence; that said complainant appeared by Edward Taggart, one of his solicitors, and that the said defendant appeared by Niram A. Fletcher, one of his solicitors.

Witness my hand, this 2nd day of July, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

Fees:

2 oaths		50
85 folios	17	00
4 ad j'm'nts	2	00
5 exhibits	1	25
	$20	75

99 United States Circuit Court, Western District of Michigan.
In Equity.

FISHER *vs.* VOSS.

Complainant's Testimony in Rebuttal.

100 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLABALD VOSS, Defendant.

Depositions of witnesses produced, sworn and examined in the above-entitled cause, on the part and behalf of the complainant, by way of rebuttal, in pursuance of the stipulation and order based thereon in this cause, at the office of Taggart, Stone & Earle, on Tuesday, the 6th day of May, A. D. 1879, at two o'clock, p. m.

The complainant appeared by Edward Taggart, his counsel; the defendant appeared by Niram A. Fletcher, his counsel.

CHARLES J. KRUGER, a witness produced, sworn and examined on the part and behalf of the complainant, being duly sworn, says:

My name is Charles J. Kruger; my age is fifty-four years; I reside in the city of Grand Rapids; I am now a dealer in tobaccos and cigars.

Q. How long have you resided in the city of Grand Rapids?

A. Twenty-eight years.

Q. What occupation or business have you followed during that time?

A. Saddle and harness making. I was in the tanning business for a while. For the last three years I have been in tobacco and cigar business.

Q. How long were you engaged in the business of saddle
101 and harness making?

A. From 1840 to 1873.

Q. How long were you engaged in that business in the city of Grand Rapids?

A. Twenty-three (23) years.

Q. Were you engaged alone, or were you a member of a copartnership?

A. I was a member of a copartnership, the firm of C. J. Kruger & Co., commenced in '67, it lasted until Jan'y 1st, 1873.

Q. In your busines of making saddles and harness did you manufacture collar-pads at any time.

A. We did to some extent.

Q. Are you acquainted with the complainant in this suit, Mr. C. J. Fisher?

A. Yes, sir.

Q. When did you become acquainted with him first?

A. I think it was in the fall of 1869.

Q. Under what circumstances?

A. He came to our establishment to introduce a patent collar-pad.

Q. Did your firm make any business arrangement with him; and, if so, what was it?

(Defendant's counsel objects; irrelevant and immaterial.)

A. We made arrangement to manufacture the collar-pad and have the exclusive sale, we to pay him a royalty of fifty cents a dozen.

Q. What kind of a pad was it that you manufactured under this agreement with Mr. Fisher?

A. It was a leather pad, crimped, formed upon on a block.

Q. Please to examine the pads I now show you and state how it compares with the pads made by you under that arrangement?

A. That is the kind of pad we made exactly.

102 Complainant now offers in evidence the collar-pads referred to in the last question, and the same are received and marked Exhibit "F," and Exhibit "G," Complainant's Proofs.

Q. In what way were these pads, Exhibits F and G, manufactured?

A. They were crimped on a block.

Q. Describe the block as used in the manufacture of these pads?

(Defendant's counsel objects; immaterial and irrelevant.)

A. I don't really know how to describe the block; it is made in the same form as the inner surface of the pad should be when done.

Q. How did the block used by your firm in the manufacture of pads compare with the block which I now show you?

(Objected to, same as above.)

A. We had that same kind of blocks.

Q. What kind of pads, if any, were your firm manufacturing prior to the time of acquiring the right to manufacture under Fisher's patent?

A. We made what we termed a soft pad, with a leather top, and the under surface made of cloth or sheep-skin; it was stitched around and stuffed with hair.

The block referred to in the previous question is offered in evidence. To which defendant's counsel objects; immaterial and irrelevant.

The block is now marked Exhibit "H," Complainant's Proofs.

Q. How does the soft pad I now show you compare with the pad manufactured by yourself, or your company, prior to the time you manufactured the Fisher pad?

A. It is the same pad, except ours had a black harness leather top.

103 The pad last referred to is now offered in evidence, and the same is received and marked Exhibit "I," Complainant's Proofs.

Q. I now show you two collar-pads, marked respectively Defendant's Exhibit No. "7" and Defendant's Exhibit "I," and ask you to

state whether or not you ever manufactured any similar pads, and also whether you had any knowledge of any similar pads being manufactured prior to the time that you entered into the contract to manufacture the Fisher pads?

A. We never made any like that; I don't know of any being manufactured.

Q. Did you consider the Fisher pad a valuable pad?

A. We did, or we shouldn't have gone into it.

Q. In what did it exceed in utility, the pads then in use?

A. In the inner surface being perfectly smooth, and having thickness enough to prevent the strap hurting the horse's neck.

Q. Explain a little more fully how this perfect smoothness on the inner surface is produced.

A. It is produced by being crimped over a block, much the shape of a horse's neck, and being formed up and stuffed with hair or some other substance.

Q. I show Complainant's Exhibit "A," and ask you whether, in your opinion, Complainant's Exhibits "B" and "G" are manufactured substantially in accordance with the specifications therein contained?

A. I think they are.

On cross-examination witness says:

Q. What kind of leather is the inner lining of "Exhibit C," in your opinion?

A. Sheep-skin.

Q. If a pad was made with an outer lining of sheep-skin and stuffed with hay, would it retain the shape that the inner lining of "Exhibit B" does?

104 A. I think it would if the hay was cut fine enough, for the reason that if it is stuffed on that block it must be just as smooth as the block.

Q. If a piece of sheep-skin was formed over a block in to the shape that "Exhibit 7" is, would it retain its shape very long?

A. I think not.

Q. Is it, then, the forming over the block or the material upon which it is formed that would make it retain its shape like "Exhibit B"?

A. It is the support that the packing gives to it that makes it retain its shape.

Q. In your opinion was "Exhibit B" made by placing layers of leather on top each other, or by making an outer and inner lining and inserting a stuffing between them?

A. I should say this was made by placing the layers of leather on top each other over the crimped leather; it was done on the block, however; it couldn't have been done otherwise.

Q. When C. J. Kruger & Co. was manufacturing the Fisher pads what materials did they use for stuffing?

A. They used deers-hair and floss, short wool pickings.

Q. Look at Complainant's "Exhibit F," and say whether that is

made by building layers of leather on top each other or by inserting such a stuffing as you have just named?

A. This was made by building layers of leather on top each other.

Q. How, in your opinion, was Complainant's "Exhibit G" made?

A. I should judge that this is filled with hair or some other such substance.

Q. Upon reading the specification to Fisher's patent do you find any description of a pad built up by solid layers of leather?

105 A. Don't see any leather here; I see that the stuffing is of hay or any other suitable material; I am sorry that we did not know when we were manufacturing that leather was a suitable material, because it is cheaper than hair, and we should not have used hair.

Q. Then you did not use leather in the manufacture of pads when C. J. Kruger & Co. were manufacturing?

A. Not as it is used then, "Exhibit F;" we used some leather.

Q. How did you use it?

A. By building up on to the pad, partly, and then using some hair or wool.

Q. Do you find any stuffing in "Exhibit D"?

(Objected to; not cross-examination.)

A. I do not.

Q. Do you find any outer covering such as is described in the specification?

(Objected to, for the reason that the specification does not describe any outer lining, but merely describes an inner crimped lining. The question has, therefore, a tendency to mislead the witness.)

A. find a sheet-iron cover here; nothing else.

Q. Is there any place for a stuffing between the metallic cover and the inner lining?

A. Scarcely.

Q. Do you think that a harness-maker who had never seen a pad like "Exhibit G" or "Exhibit D," and was given that specification and drawing and was asked to make such a pad as they describe would produce such a pad as "Exhibit D"?

(Objected to; not cross-examination.)

A. No, I do not.

106 Q. Do you think he would produce such a pad as "Exhibit F"?

A. I think he would, without that cut.

Q. And yet, during all the time that C. J. Kruger & Co. manufactured them under the patent, did it occur to them to build up a pad of layers of leather like "Exhibit F"?

A. I simply say that he would make such a pad. I didn't say whether he would stuff it with leather or not.

Q. Do you think that a harness-maker, working from those specifications and drawings, and who had never seen a pad like "Exhibit B," would make a pad as that has been made?

A. I hardly think he would; still he might.

Q. In your opinion, as a practical harness-maker, could that pad, "Exhibit B," be made to assume and retain the shape it now has without being subjected to pressure over such a block as "Exhibit H"?

A. I don't think it could.

Q. When did you first see such a block used in making collar pads?

A. When Mr. Fisher introduced them here in our shop.

Q. Do you find any directions in the specifications for subjecting the pads, in manufacturing them, to pressure upon such a block as "Exhibit H"?

A. I do not.

Q. In your opinion, was "Exhibit 5" made by shaping it over a block like "Exhibit H"?

A. I think not.

Q. How long did C. J. Kruger & Co. manufacture and sell the Fisher pads?

A. I think about three years.

Q. Did that firm not take considerable trouble, and spend considerable money, in endeavoring to introduce those pads to the trade?

107 A. Yes, we did.

Q. What was the occasion of your giving up the sale of them?

A. We didn't think they were very profitable.

Q. Is it not a fact that you found that you could not compete successfully with what is known as the zinc collar-pad?

(Objected to; not cross-examination, irrelevant and immaterial.)

A. We couldn't compete with the zinc pad because they were cheaper.

Q. Is it not a fact that the zinc pad is being superseded in turn by what is known as the sole-leather pad?

(Same objection.)

A. I have no knowledge of the zinc pad being superseded by any pad. I am not in the pad business.

Q. When did you first see a collar-pad built up with layers of leather?

A. I think that "Exhibit F" is the first I have seen built—all of leather.

Q. When did you first see "Exhibit F"?

A. I think I never saw it before to-day.

Q. How long ago did you first see collar-pads, consisting of a single piece of leather with the edges turned up?

A. I have seen those ever since I have been in the business.

Q. Were those provided with little straps to go over top?

A. They were usually; in some instances they were sewed on a collar on one side.

Q. What means were taken to make the edges retain their turned-up shape?

A. They usually skived the edges down and turned the edges up with the hand, a stick, hammer handle, or anything.

Q. Did they wet the leather before working it in that way?

108 A. Usually.

Q. Isn't the process you have described one method of crimping?

A. I don't know; we never called it that.

Q. What does crimping leather mean?

A. I don't know as I can explain it.

Q. Is not crimping leather, subjecting it to a process which will give it a tendency to retain an unnatural shape?

A. I think you are correct in that.

On redirect examination witness says:

Q. While you were manufacturing under the Fisher patent, who had the principal charge of manufacturing the pads?

A. Mr. Fisher had charge of that department.

Q. Will you explain, by reference to "Exhibit F," how that a portion of the pad was built up with leather, and a portion with hair or wool?

A. We used to put in some leather on top here to save hair, we used to have lots of refuse leather, and then put wool in next to the inner surface.

Q. I now show you a pad, and ask how it compares with those constructed part of leather and part wool, which you referred to?

A. It is just such a pad.

The pad last referred to is now offered in evidence, and received and marked "Exhibit K."

CHARLES J. KRUGER.

Read over to witness and by him subscribed in my presence, this 6th day of May, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

109 Further examination adjourned until Monday, May 12th, A. D. 1879, at 10 o'clock a. m., at same place.

MONDAY, *May 12th*, A. D. 1879, ten o'clock a. m.

Examination resumed.

FRANKLIN MATTISON, a witness produced, sworn, and examined on the part and behalf of the complainant, says:

My name is Franklin Mattison; my age is fifty years; I reside in the city of Grand Rapids; I am manufacturer and dealer in harness.

Q. How long have you been engaged in manufacturing and dealing in harness?

A. Oh, some twenty-five or thirty years.

Q. How long in the city of Grand Rapids?

A. About twenty years, I think.

Q. Are you acquainted with the complainant, C. J. Fisher; and, if so, how long have you been acquainted with him?

A. I don't remember exactly, but I would say safely for two years.

Q. State whether or not in your business of manufacturing harness, you have been accustomed to manufacture collar-pads, or collar-caps?

A. I have.

Q. When, if ever, did you first know of the patented collar-pad of the complainant, C. J. Fisher?

A. The first I knew of it, was when they were manufacturing them at C. J. Kruger's, I should think it was eight or nine years ago.

Q. Prior to the time you became acquainted with the Fisher pad, what kind of collar-pads were you accustomed to manufacture?

A. I used to be accustomed to make something like that (Exhibit I, Complainant's Proofs) we called it a quilted pad, and we also manufactured like that (Exhibit E, Complainant's Proofs), which we called a collar-cap.

110 Q. What distinction do you make between a collar pad and a collar-cap?

A. A collar-cap would be a single piece of leather, and a collar-pad, of course, would be a pad formed up, with buckles and straps. I don't know as that would really cover it, because there is a quilted pad that isn't formed up.

Q. State whether or not you ever saw a collar-pad having its inner surface composed with a single piece of crimped leather, prior to the time you first saw Mr. Fisher's pad.

A. Well, I couldn't say as I ever did; of course, I have made a single cap, something like this. (Exhibt 7, Defendant's Proofs.)

Q. State in what a pad constructed like complainant's "Exhibit G," or complainant's "Exhibit D," is superior to what you call a collar-cap, constructed like defendant's "Exhibit 7"?

A. The stiffening put on here ("Exhibit G," Compl't's Proofs, and "Exhibit D," Compl't's Proofs,) to keep it in place.

Q. What effect does wear have upon "Exhibit 7," Defendant's Proofs?

A. I hardly know what you want to get at.

Q. I want to know whether "Exhibit 7," when placed beneath the collar on the horse's neck, will keep its place or not; also, what effect the hame straps, or collar straps, will have on it?

A. I shouldn't think that this ("Exhibit 7") would keep its shape so well as those ("Exhibits D & G, Compl't's Proofs"), and the hame strap, this being a single piece of leather, would be more apt to hurt the horse's neck.

Q. Please to explain the process used by you in your shop in the manufacture of collar-caps which you say were similar to "Exhibit 7"?

A. Well, the process would be just to wet them, put them on to the collar, and curl them over by hand, or turn up the edges.

111 Q. When your collar cap was manufactured and placed upon the collar, how did it correspond in appearance with complainant's "Exhibit E"?

A. It would be same thing as this, only I put on two straps, and this has only one.

Q. State whether or not, in your opinion, the sheet-iron in complainant's "Exhibit D," the cast-iron in complainant's "Exhibit C," and the stiffened leather in the complainant's "Exhibit B" and G, are designed to perform and do accomplish the same result.

A. I should say they would.

Q. State whether or not you ever put up as an article of manufacture, to be sold separate from your ordinary business, any collar pads similar to complainant's "Exhibit E," or defendant's "Exhibit 7"?

A. I often sell one without a collar; but as to manufacturing and jobbing them off, I never did anything of that sort.

Q. How did the first collar-caps manufactured by Mr. Fisher, that you saw, compare with complainant's "Exhibit G"?

A. I should think they were, near as I can remember, about the same thing.

On cross-examination witness says:

Q. Would you call the piece of leather at the top of "Exhibit E" a pad or a cap?

A. I should call it a cap.

Q. Is "Exhibit 7" a pad or a cap?

A. I should call it a cap.

Q. Is "Exhibit D" a pad or a cap?

A. Now, there are just as many harness-makers call this a pad as a cap (referring to Exhibit "E"); I should call "Exhibit D" a pad or cap—it is a single piece of leather—every man is entitled to his own views. The idea is that there is such a variety here
112 that I want to distinguish what you call a pad and what you call a cap; a great many would call that ("Exhibit D") a cap, I would be just as liable to call it a pad as a cap; this ("Exhibit E") I would not call a pad.

Q. Is your understanding of a collar pad an article censisting of an outer and inner piece of leather with something between them?

A. Why, of course, that would make a pad; now, this "Exhibit C" has an outer and inner piece but no stuffing, and is just as much a pad as the other, "Exhibit G."

Q. Why would you call "Exhibit E" a cap, and "Exhibit C" a pad?

A. This, "Exhibit E," is a single piece of leather and has no stuffing to support it, "Exhibit C" has stiffening.

Q. Then, your idea of the difference between a pad and a cap is that the pad consists of more than a single piece?

A. Yes.

Q. What would you call the zinc article which they put at the top of the horse-collars.

A. I would call it a pad.

Q. That consists of one single piece of zinc, does it not?

A. Two. I think they have changed the pattern lately; I guess that there isn't but one thickness now; there used to be two.

Q. How long have you seen pads made and used on horse-collars?

A. Oh, ever since I have worked at the business, twenty-five or thirty years.

Q. How long have you seen caps made of a single piece of leather used at the top of collars?

A. Ever since I have worked at the business.

Q. In making caps did you wet the leather before you formed it up?

A. Yes.

Q. Did you sometimes use a hammer or a smooth stick to
113 work the edges of leather to make them stay turned up?

A. Yes.

Q. Wouldn't you call that crimping the cap?

A. I would.

Q. Did it ever occur to you in making pads, before you saw Fisher's, to wet the inside piece and turn up its edges before putting on the back and putting in the stuffing?

A. Yes; that is the only way we could make them.

Q. Did you ever see a diamond shaped hole cut in a collar-cap, and the hole sewed up in order to make the edges of the pad retain the turned up shape before you saw Fisher's pad?

A. To cut the diamond shaped hole would not make the edges turn up, it would bring the ends down and make it retain its saddle shape.

Further examination adjourned until 2:30 p. m.

2:30 p. m., examination resumed.

Q. For how long have you seen pads made with the inside piece having been wet and its edges turned up, before the back was put on and the stuffing put in?

A. I don't know as I can state just how long; I should think probably ten or twelve years any way.

Q. Have you ever seen pads made substantially like defendant's "Exhibit 4?"

A. Yes; I have seen them very much like that and had them made very much like that.

Q. Have you not seen them made very much like that for the last fifteen or twenty years?

A. I have; aside from the black piece of leather on the top.

Q. In your judgment, has the inner lining of "Exhibit 4"
114 been wet and formed up in order to get it in its present shape?

A. I should think it had; it could be done dry; it's my opinion that it was done wet.

Q. Have you ever seen any of the Fisher pads, such as were made

by C. J. Kruger & Co., after they had been used a long time, and nearly worn out?

A. Yes.

Q. In your opinion, is not Defendant's "Exhibit 6" one of those?

A. Well. I coludn't tell. I couldn't say whether that was one or not. I don't know.

Q. (Showing the witness "Exhibit B.") Do you think that pad is stuffed with hair, or built up solidly of layers of leather?

A. Well, that is something I can't tell. The only way I can judge, is by the one cut into there. That is of leather and hair or wool.

Q. Do you notice any difference in the shape of the pad which Fisher now makes and the pad which was made by C. J. Kruger & Co. under his patent?

A. Yes.

Q. What is the difference?

A. The one he makes now is turned up; the one Kruger & Co. made was straight across the top, like compl't's "Exhibit G."

Q. Are not the pads that Fisher makes now saddle-shaped on the top?

A. I don't know whether you would call it saddle-shaped; I should not call it saddle-shaped; it is turned up on each side, and is different than what he made before.

Q. Don't the pad he makes now keep the collar in position much better than the pad he made when he was with Kruger & Co.?

A. I should say it would, on account up of the turning up of the ends.

115 Q. If a practical harness-maker was given the specification and drawing of "Exhibit A" and asked to make such a pad as is there described, would he, in your judgment, produce such a pad as "Exhibit 5"?

A. I couldn't tell whether a harness-maker would do that or not. It resembles it ("Exhibit 5") and this ("Exhibit G").

Q. Do you think he would produce such a pad as "Exhibit D"

A. No; I think not.

Q. Or "Exhibit C"?

A. I should think not.

Q. Or as "Exhibit B"?

A. I should think he would.

Q. Do you think "Exhibit B" was made by stuffing a cavity between an outer and inner piece of leather, or was built up on a form with pieces of leather laid one on top of another and without any stuffing between them?

A. All I can judge by is those that are cut into stuffed with leather and hair.

Q. Don't the drawing attached to the specification show a pad which is straight across the top?

A. Yes.

Q. "Exhibit B" isn't straight across the top, is it?

A. No.

Q. The loops are put on the top of "Exhibit B" differently than represented in the drawing, are they not?

A. Yes.

Q. Then, why do you think a harness-maker would pro-
116 duce such a pad as "Exhibit B," working from those drawings and specifications?

A. The bottom drawing here represents it closely. The top drawing—he would be just as apt to make a flat piece of leather as anything else, if handed to an ordinary harness maker.

Q. Then, from your examination of the drawings and specifications, you think that figure 2 represents a different shaped pad from figure 1?

A. One is formed in shape, the other is not. Figure 2 looks more like the pad than figure 1 does.

On redirect examination, witness says:

Q. In your cross-examination you state, in substance, that you made pads by wetting and trimming up the inside lining before stuffing; what kind of pads did you refer to as having been made in that way?

A. I made two kinds, a stuffed pad and a leather pad we would call it—made out of leather.

Q. State whether or not the stuffed pad referred to was a quilted pad.

A. Sometimes we used to quilt them, and sometimes not. "Exhibit 4" would be as near the imitation of it as I can compare.

Q. What kind of leather did you use for the inner surface in the stuffed pad?

A. In making them this way (Exhibit 4) — used sheepskin and calve's-skin—any thin leather that we should happen to have. The quilted pad would be made like "Exhibit I."

Q. Did you have any form for pressing up a thick piece of leather into a smooth shape like the inner surface of "Exhibit 4"?

A. No.

Q. In a stuffed pad, with an inner surface of sheepskin or calf-
117 skin, did not the quilting have a tendency to hold it in shape, and was it not an improvement over such a pad made without quilting?

A. I don't know as it would keep the pads in shape any; it is done to keep the hair in place.

On recross-examination witness says:

Q. When a pad is stuffed with wool, hay, or hair, and is not quilted, is not the stuffing apt to get displaced and get worked into bunches when the pad is used?

A. In "Exhibit I" it would; in "Exhibit 4" it wouldn't be so apt to.

Q. Is it not a fact that the Fisher pads became less saleable after the zinc pad was put on the market?

A. I don't know as I would be capable of judging; I know there were sights of the zinc pad sold; I couldn't tell whether that would reduce the sale of his any or not.

Q. Are there as many Fisher pads sold now as before the zinc pads were put on the market?

A. I should think not; there are not so many here; I can't say about other parts of the country.

Q. Have not the zinc pads lately given way very much to the sole-leather pads?

A. My opinion is that they have.

Q. In your judgment, what pad is now most generally sold and used?

A. They all get their share of sale; my opinion would be, though, that the sole-leather pad has the largest sale.

On redirect examination, witness says:

Q. Which pad, in your opinion, is the best pad in use?

A. There are three pads that are about the same; I had just as live have one as the other; they are the sole-leather pad, Fisher's pad, and the zinc pad.

118 FRANKLIN MATTISON.

Read over to witness and by him subscribed in my presence, this 12th day of May, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

Further examination adjourned until Thursday, June 19th, at 10 a. m., at same place.

THURSDAY, *June 19th*, 10 a. m.

Examination resumed.

CHARLES J. FISHER recalled.

Q. In what year did you commence to manufacture collar pads for C. J. Kruger & Co.?

A. 1869.

Q. Where?

A. In the city of Grand Rapids.

Q. Who had the charge and oversight of the manufacture of your pads for C. J. Kruger & Co.?

A. I had.

Q. Will you please to describe the process you used in manufacturing such pads.

A. Had a lot of forms similar to Exhibit H; they were different sizes, but the same shape; the inner piece was wet and put on first; made smooth to fit the form; free from wrinkles; then laid up pieces of leather, as shown in "Exhibit K" and "Exhibit F"; then I took some paste and put around the edges of part of the form, and then placed this leather, laid up as in "Exhibit K" and "Exhibit F," and the outside piece, between the two forms, the outside one and the inside one. If the leather formed up as in "K and F," failed to fill it smooth, I then, with a stuffing steel, punched in wool or hair to finish making it smooth,

119 then pasted the part that was not pasted before, and *and* finished up by stuffing at the other side. After they were dry they were taken off from this form, trimmed, stitched, and finished

off. The most of them were made in that manner. Some were made by crimping the first piece on to the form—that is, the piece that comes next the horse; then pasting on pieces of leather, one after another, until the desired thickness and firmness was attained; then finished off, as before described. The object in having this clamp on the outside, and the inside as well, in using hair or wool, it could be put in firmly and keep the right shape, as they do in packing tobacco or any of those loose materials in papers on the same principal. It is necessary, with leather as well as other material, to keep it within proper bounds, or to know when you get the proper size and shape to produce an artical of manufacture, one similar to the other, as any article of manufacture should be. In manufacturing as last described I used no wool or hair or other such material; I used leather for the whole thing.

Q. Where did you get the block "Exhibit H"?

(Objected to; irrelevant & immaterial.)

A. It is one of a lot I brought from Iowa.

Q. When?

(Objected to; irrelevant and immaterial.)

A. 1869.

Q. State whether or not the "Exhibit F, G, and K" were manufactured for the purpose of being made exhibits on this hearing, or whether they are a part of a lot manufactured for actual use.

A. They are part of a lot manufactured for actual use.

Q. For whom were they manufactured?

A. C. J. Kruger & Co.; but failing to get them done on
120 time, they were left on my hands. It was a large lot for that small size. When they couldn't fill their order on time that left them on my hands.

Q. At the time of your making your application for a patent what did you understand to be the meaning of the term "any suitable substance," as used in your specification?

(Objected to; immaterial.)

A. Any substance that in my judgment would be proper to keep it in shape and prevent wrinkles or protuberances.

Q. What substances were spoken of by you as being suitable for such purpose?

(Objected to; immaterial.)

A. There were quite a number spoken of at the time—a piece of wool, iron, or brass, or tin. What I have reference to in speaking of tin is a piece cast like "Exhibit C"; and while talking over the matter with those present, one of my friends made the remark: "Who the h—l would want any metal-ic substance on a horse's neck?" I told him that was his view of it, and that I thought different, and I was afraid, if not mentioned definitely, some one might make trouble by using metal-ic substance, and we then compromised by making the statement there in my specification, where it says hay or any other suitable material.

Q. State what time of year you came from Iowa to Grand Rapids, referred to above.

A. In the fall; the very last days of September or the first days of October.

On cross-examination witness says:

Q. When did you quit working for C. J. Kruger & Co.?

A. I think it was in the fall of 1871.

121 Q. What have you been engaged in since you quit working for C. J. Kruger & Co.?

A. Nothing permanently since that time but pads, except box-making a while.

Q. Have you been making and selling pads a good share of the time since 1871?

A. Yes.

Q. These pads, "Exhibits F, G, & K," were not taken off your hands by Kruger & Co., because you hadn't them done in time?

A. Yes.

Q. How many were left over in that way?

A. It was three gross; probably three or six; I can't think; I know it was extra large for that size.

Q. How many have you on hand still?

A. I think there are about a dozen, aside from these exhibits.

Q. Where have they been kept in the mean time?

A. They were sent to different places; some left on commission; these exhibits and what I have on hand are those that were left of a lot put out on commission.

Q. How long since you took these pads which you now have out of your commission man's hands?

A. Last fall or winter.

Q. Who was the commission man who had them?

A. James H. Smith.

Q. Did you get them out of Smith's hands after I inquired of you on the street if there were any to be had?

A. I believe I did.

Q. Was not that after the Chicago testimony was taken?

A. I can't say positively whether it was or not.

122 Q. "Exhibit B" is a much solider and firmer pad than "Exhibit F," is it not?

A. It is, and should be; "Exhibit F" is for light use, and "Exhibit B" is the heaviest.

Q. When you made pads with Kruger & Co. with layers of leather, did you make any which were as hard and solid and firm as "Exhibit B"?

A. Those that were pasted up of leather were about as hard and solid; I have now more substantial and heavier machinery for making them than I had when with C. J. Kruger & Co.

Q. When did you begin to make your pads hollowed out on top like "Exhibit B"?

A. It was some time after I left Kruger & Co.; not long, though.

Q. Is anything done to "Exhibit B," besides the crimping of the pieces of leather which forms its inner surface, which makes that piece of leather retain its turned-up shape at the edges?

A. The staying or backing, the same as "Exhibit C;" that "Exhibit C" wouldn't retain its turned-up shape but for that, without some staying or backing to crimped formed up inner lining; it would be like placing your thumb on the top of "Exhibit I;" pressing would form *a* protuberences and wrinkles.

Q. Is there nothing in the peculiar manner which you put the backing upon "Exhibit B," which tends to make it retain its turned-up shape?

A. Why I stated before, in laying on one layer after another it takes the shape of the form, and when pasted and dried it must naturally cause it to remain so.

Q. Don't you shrink on the upper piece?

A. It is drawn on with paste, similar to the other pieces.

C. J. FISHER.

123 Read over to witness, and by him subscribed in my presence, this 19th day of June, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

UNITED STATES OF AMERICA:

The Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

CHARLES J. FISHER, Complainant, *vs.* WILLABALD VOSS, Defendant.

WESTERN DISTRICT OF MICHIGAN, *ss:*

I, Charles A. Renwick, the special examiner heretofore appointed in this suit, do hereby certify that the foregoing are the proofs taken and the depositions of Charles J. Kruger, Franklin Mattison, and Charles J. Fisher (recalled), witnesses produced before me in behalf of said complainant, and taken, commencing the 6th day of May, A. D. 1879, at 2 o'clock p. m.; that said witnesses were first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to said suit; that the examination of said witnesses was reduced to writing by me, and by me read over to said witnesses, and by said witnesses subscribed in my presence; that said complainant attended said examination by Edward Tag-
124 gart, one of his solicitors, and that the defendant attended said examination by Niram A. Fletcher, one of his solicitors.

Witness my hand, this 2nd day of July, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

Fees:

2 oaths	50
76 folios	15 20
3 adjournments	1 50
5 exhibits	1 25
	$18 75

125 Department of the Interior, United States Patent Office.

(Vignette.)

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this Office of the specification and drawing in the matter of the letters patent granted C. J. Fisher May 4, 1869, No. 89646, for improved neck-pad for horses.

In testimony whereof, I, V. D. Stockbridge, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifth day of May, in the year of our Lord one thousand eight hundred and eighty-one, and of the Independence of the United States the one hundred and fifth.

[SEAL.] V. D. STOCKBRIDGE,
Acting Commissioner.

126 UNITED STATES PATENT OFFICE.

C. J. FISHER, of Waukon, Iowa.

Letters patent No. 89646, dated May 4, 1869.

Improved Neck-Pad for Horses.

The schedule referred to in these letters patents and making part of the same.

To all whom it may concern:

Be it known that I, C. J. Fisher, of Waukon, in the county of Allamakee, and State of Iowa, have invented a new and improved neck-pad for horses; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings forming part of this specification, in which—

Figure 1 represents a plan or top view of my improved neck-pad; and

Figure 2 is an edge view of the same.

Similar letters of reference indicate corresponding parts.

This invention relates to a new device for protecting the necks of horses between the upper ends of the collar to prevent galling. For this purpose pieces of leather, cloth, or other material have heretofore been used, but without the desired success. Pads could not be made, as their inner faces could not be kept clear from wrinkles or protuberances, which are more injurious than the omission of a protecting device.

My invention consists in producing a pad which may be attached to the collar, and which is perfectly smooth on the under side, the leather used on the under side being crimped in order to obtain the desired shape.

A, in the drawing, represents the pad. It is so shaped that it fits a horse's neck between the arms of the collar, it being thick on top and tapering toward the ends, as is clearly shown in Fig. 2.

The under side of the pad is formed by a sheet of leather, *a*, which is crimped in order to have its ends turned up without producing wrinkles; the stuffing in the pad is of hay, or any other suitable material.

On the outer side of the pad, near the ends of the same, are straps, *b b*, which are fitted around the collar, as indicated in Fig. 2, to prevent longitudinal displacement of the pad.

On top of the pad is arranged a strap, *c*, under which the end straps *d d* of the collar may be passed, as in Fig. 2, to prevent upward displacement of the pad.

I claim as new, and desire to secure by letters patent, as an article of manufacture—

The neck-pad, having an inner lining of crimped leather, and provided with straps, *b c*, to allow its being fastened to the collar, as herein shown and described for the purpose specified.

C. J. FISHER.

Witnesses:
L. O. BEARCE.
A. J. RODGERS.

(Here follows diagram marked No. 127.)

128 [Endorsed:] U. S. circuit court, west'n dist. of Mich. Charles J. Fisher *vs.* Willibald Voss. Defendant's Exhibit "Fisher Copy." O. W. B., N. P.

129 WEST AND BOND,
Counsellors in Patent Causes, 208 La Salle St.,
CHICAGO, *Jan'y* 11, 1879.

Cl'k U. S. cir. c't, Grand Rapids, Mich.:

I send you by express to-day depositions of Charles H. Stevens, James F. Walsh, and David ——, taken by and before [me], to be used upon the hearing of a certain cause now pending in your circuit court, wherein Charles J. Fisher is complainant and Willibald Voss defendant, and I enclose with this Defendant's Exhibit "Fisher Copy," in evidence by defendant.

Please acknowledge receipt.

Y'rs resp'y,
O. W. BOND,
208 *La Salle St., Chicago, Ill's.*

Room 8.

130 United States Circuit Court, Northern District of Illinois.

CHARLES J. FISHER
vs.
WILLIBALD VOSS. } In Equity.

Depositions of Charles H. Stevens, James F. Walsh, and David J. Powers, on the part of the defendant, said witnesses residing out of the district above named, and more than one hundred miles from the place of trial of said cause, and their depositions in said cause being therefore taken *de bene esse*, before me, pursuant to the rule in such cases made and provided, the same to be sealed up and

U. S. Circuit Court
Western Dist. Mich.
Defendants Exhibit
Fisher case
Oct. Ter. 1872

C. I. Fisher.

Horse Collar

No. 89,646. Patented May 4, 1869.

Fig. 1.

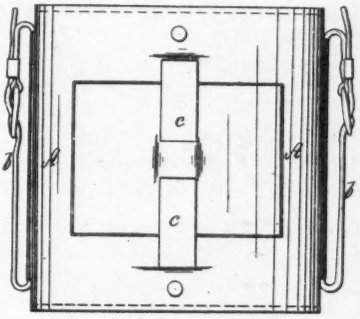
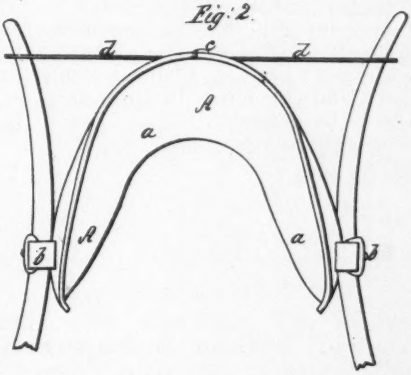


Fig. 2.



No. 161.
Voss
vs.
Fisher
} p. 124

Witnesses,
Chas. A. Wiegand
John F. Brock

Inventor,
C. I. Fisher
per Munn & Co
Attorneys

addressed by me to the clerk of said court when taken, and transmitted by me to said clerk.

O. W. BOND,
Notary Public.

131 *Index.*

[Notice. Caption.]

	Direct.	Cross.	ReD.	ReC.
Stevens	4	9	14	
Walsh	15	19		
Powers	21	28		

Officer's certificate, pp. —.

Defendant's paper, Exhibit "Fisher's Copy," printed copy of the specification and drawing of the patent No. 89646.

DEFENDANT'S MODEL EXHIBITS.

1. Sample of style of neck-pad.
2. Duplicate of Complainant's Exhibit "B" cut open.
3. Sample of one style of stuffed neck-pad.

132 The Circuit Court of the United States for the Western District of Michigan, Southern Division. In Equity.

CHARLES J. FISHER, Comp't, *v.* WILLIBALD VOSS, Def't.

Take notice that James F. Walsh, C. H. Stevens, and D. J. Powers, all of the city of Chicago, in the State of Illinois, will be examined *de bene esse* on the part of the defendant in the above-entitled cause before Oscar W. Bond, a notary public for Cook county, in the State of Illinois, at his office, Room 8, No. 208 La Salle street, in said city of Chicago, on the 7th day of January, 1879, at ten o'clock in the forenoon of that day, thence said examination will be proceeded with from day to day until such depositions are completed; at which time and place you are hereby notified to be present and put interrogatories to said witnesses as you shall see fit.

Dated Grand Rapids, Mich., December 30, 1878.

Yours, &c., SIMONDS & FLETCHER,
Sol'rs for Def't.

To EDWARD TAGGART,
Sol'r for Pl'ff.

STATE OF MICHIGAN, } ss:
County of Kent, }

Horace B. Walmsley, being duly sworn, says: That on the 30th day of December, 1878, he served a notice, of which the within is a true copy, upon Edward Taggert by delivering the same to him personally.

HORACE B. WALMSLEY.

133 Subscribed & sworn before me, this 30th day of December, 1878.

G. A. WOLF,
Notary Public, Kent Co., Mich.

United States Circuit Court, Western District of Michigan. In Equity.

CHARLES J. FISHER *vs.* WILLIBALD VOSS.

At Chicago, Illinois, on this 7th day of January, A. D. 1879, before O. W. Bond, notary public.

Present: Edward Taggart, Esq., for complainant; E. A. West, Esq., for defendant.

At ten o'clock in the forenoon, pursuant to the notice hereto attached, the parties to said cause, by their counsel as above, met at the office of O. W. Bond, Room 8, No. 208 La Salle street, Chicago, Ills., when the following proceedings were had.

CHARLES H. STEVENS, a witness produced on the part of the defendant, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by E. A. WEST, Esq., as follows:

134 Q. 1. State your name, age, residence, and occupation.

A. My name is Charles H. Stevens; my age is fifty-two years; my residence is Chicago, Ills.; my occupation is manufacturer of horse collars; I have been in the harnesss business in all of its various branches since 1845, except from 1865 to 1873; I was manufacturing saddlery hardware, and during that time we manufactured gig saddles and everything pertaining to the business.

Q. 2. Have you ever made any inventions for which you obtained patents; and, if yes, how many, and to what did they relate?

A. I couldn't tell you without counting up; some ten or twenty; well, to the improvements in collar buckles, self-adjusting trees, shaft tugs, halter trimmings, gig saddles, and horse collars.

Q. 3. Look at the article shown you, and state what it is.

A. It is what is used for a neck-pad to a horse collar.

Q. 4. If you have ever made, or used, or sold neck-pads like this, state when and where, and to what extent, and state also how they were made.

A. Well, I have made them the same as that; I think the first when I commenced crimping them was in the year 1862; I made them to what the amount of my trade required, from one hundred and thirty to one hundred and fifty set a year, and also we sold a great many for repairs where the pad became worn and destroyed, so that the horse's neck became galled; we replaced them with new; this was in Wisconsin, Beaver Dam; well, I usually formed them then over a block; took and cut the leather to shape and wet it; then, after that, I made a former with top and bottom, and
135 pressed them into shape; that is all, with the exception that I have cut them out a diamond-shaped piece in the center, and brought the edges together and sewed them, which brought them into the same shape as this is, or near it.

Neck-pad shown witness offered in evidence by defendant's counsel, and the same is marked Defendant's Exhibit 1, O. W. B., N. P.

Q. 5. During what years did you make and sell neck-pads like this, defendant's "Exhibit 1"?

A. Well, it was from early spring of 1862 to the spring of 1865.

Q. 6. State whether the pads which you made during that time like this "Exhibit 1" were formed by the process known as crimping?

A. At first they were formed by crimping, and then afterward by pressing.

Q. 7. Have you examined, and do you understand the papers now shown you purporting to be a copy of the specification and drawings of letters patent of the United States, granted to C. J. Fisher, dated May 4th, 1869, No. 89646?

A. Yes; I have examined them.

Copy of specification and drawing shown witness, offered in evidence by defendant's counsel, and the same is marked Defendant's Exhibit, "Fisher Copy," O. W. B., N. P. Complainant's counsel reserving the right to object to said exhibit if it [is] not a true copy of the specification and drawings of said patent to C. J. Fisher, the complainant.

Q. 8. Look at the neck-pad now shown you, marked Exhibit "B," Complainant's Proofs, and state whether or not it is made in accordance with the said exhibit, "Fisher Copy," and give your reason for your opinion.

136 A. Well, in the first place his specifications calls for a pad being made of two parts, upper and lower, being formed so as to have an opening or cavity, and that filled with hay or some other substance of that nature, and this pad is formed by placing the under piece on a former or block, and then laying in pasted skivings, and those are placed on this inner lower surface in proper shape to form the required thicknesses, and then the upper part is placed on and the whole compressed together to form its present shape. Instead of being a stuffed pad it is a compressed pad of various substances or many substances of the same material. The pad I have been describing is the one marked "Exhibit B."

Q. 9. Look at the neck pad now shown you, which has been partly cut open, and state whether in your opinion it is made in the same way as "Exhibit B," Complainant's Proofs?

A. I should say they were both made in the same form, of the same material, and in the same way.

(Neck-pad shown witness, offered in evidence, and the same is marked Defendant's Exhibit 2, O. W. B., N. P.)

Q. 10. Look at the neck-pad now shown you, marked "Exhibit C, Complainant's Proofs," and state whether in your opinion it is made in accordance with the specification and drawing marked "Exhibit Fisher Copy," and give your reasons.

A. It is not made in accordance with it, "Exhibit Fisher Copy." Well, this Exhibit C is made of a single piece of leather pressed into shape, with a metallic plate of like shape riveted to the upper side of the pad, which sustain it; and the Fisher pad is made of two parts, as I should say, blocked into shape, and then stuffed with hay or other material. They both are calculated for the same purpose, but

still are formed different and of different material, or their
137 formation is formed differently.

Q. 11. Look at the article now shown you, and state what it is.

A. Well, I should call it a neck-pad, collar neck-pad, made of pieces of leather, under and upper. The under part is cut in such shape with a edge sewed on to it, to correspond to or to form the shape of the pad required, leaving a cavity, and that stuffed with hair. I should conclude deer hair.

Q. 12. How long have stuffed neck-pads been in use, to your knowledge, in this country?

A. Well, as long as I have had any knowledge of the business, some thirty years, of different forms. I never saw any of the form of that before.

(Neck-pad shown witness and referred to in the two last answers, offered in evidence by defendant's counsel, and the same is marked "Defendant's Exhibit 3, O. W. B., N. P.)

Q. 13. Describe the stuffed pads which you know to have been in common use prior to 1867.

A. Well, we take a soft piece of leather, turn over the edges. We cut it the required width that is wanted after it is folded, and by cutting across the corners and folding those edges together it formed a long square, and closing those edges together with needle and thread it left an open sack. That we stuffed with hair to the proper thickness, and then tacked it through about half an inch apart, so that it held the hair and stuffing in its proper place. Then instead of riveting the strap we sewed it on to the edge at the extreme end of each. We usually put on a buckle and billet to buckle around the collar.

Q. 14. What do you mean by "billet"?

A. A strap tapered, with holes punched in, to receive the tongue of the buckle, as shown in "Exhibit B," Complainant's Proofs.

Cross-examination of said witness by EDWARD TAGGART, Esq.:

138 Q. 15. When did you first apply for a patent?

A. It was in 1865, the spring of 1865; the first one, I think, was granted in the latter part of 1866.

Q. 16. Where did you live at that time?

A. I left Beaver Dam, and moved to Troy, New York.

Q. 17. How long did you live in Troy, and what was your occupation there?

A. I lived there four years; I think, three and a half or four. My occupation was manufacturing special goods of saddlery hardware, such as collar-buckles, self-adjusting trees, breast-strap slides, bits, and so on.

Q. 18. Where did you move to from Troy, New York, and in what year?

A. To Syracuse, N. Y. I think it was in the fall of 1869.

Q. 19. How long did you remain there?

A. I remained there and in its vicinity till 1874.

Q. 20. What time of the year was it that you went to Beaver Dam, Wis.?

A. It was early spring, early spring of 1861; I think I moved from Juno, in the early spring of 1861, to Beaver Dam.

Q. 21. Did you immediately commence to work at your trade there, in Beaver Dam?

A. Yes; that had been my business before I went to Beaver Dam, and in fact, most all my life.

Q. 22. How long was it, after you moved there, that you commenced to manufacture collar-pads like Exhibit 1?

A. I think it was in 1862, the year 1862; what time I cannot tell particularly.

Q. 23. Describe particularly the manner in which you manufactured the first collar-pad?

A. Well, I in the first place made a former of a block, of the form I wanted the shape, then I cut the leather out in length and
139 width desired, and wet it wet, placed it on to the block, in this form, and drew it over the edges, and tacked it; when drawed down firmly and tacked, I took a hard substance and rubbed the inside smooth, just to have it set down firm to the block; then, after that a spell, I couldn't tell how long, within several months, probably, I made what is called dies, and put leather in, after it was cut in shape, and pressed those dies together, by a wedge, that I had pieces come up on each edge, and drove a wedge through, to bring the two dies together solid.

Q. 24. How did you attach the collar-pad to the collar?

A. In this form; that is, I put a billet piece on one side, and a buckle on the other, and fastened them together. I put nothing in the center.

Q. 25. What kind of leather did you manufacture them out of?

A. Made some out of the necks of harness leather, and also out of sole leather, the loose parts of sole leather.

Q. 26. How many did you manufacture out of sole leather?

A. I might have made from fifty to one hundred, or more; I can't tell anything definite about that.

Q. 27. How did those manufactured out of sole leather compare with complainant's Exhibit C?

A. They compared with this with the exception of the plate.

Q. 28. Same kind of leather, and same shape as Exhibit C?

A. Yes; they would be more the shape of this Ex. 1 than of that Ex. C.

Q. 29. What did you do with those constructed out of sole leather which you manufactured at Beaver Dam in 1861 or 1862?

A. I usually put them on to my collars that I made and sold.

Q. 30. Which did you manufacture the most of, those out of sole leather, or those out of harness leather?

A. My present impression is those out of harness leather.

140 Q. 31. Did you have a shop of your own at Beaver Dam?

A. I did.

Q. 32. Did you have men in your employ there?

A. I did; I usually worked four hands.

Q. 33. Please give the names of these that you had work for you while you were at work at Beaver Dam?

A. There was one James Gillfeather, another one by the name of Gilbert—I forget his given name, another man by the name of Hart and Robert Proctor.

Q. 34. During what years did these men that you have named work for you?

A. The first one worked for me about two years, from 1861, I should think, to the year 1863. Gilbert worked for me in 1864. Proctor, I think he worked for me from 1862 to 1864. There was several more transient ones that worked shorter times.

Q. 35. On what street, and what number was your shop situated?

A. On Main street, opposite the Stevens Hotel.

Q. 36. Were the collar pads by you manufactured stitched through as "Exhibit 1" seems to have been?

A. They were not.

Q. 37. Will you give the names of the persons to whom you sold collar-pads which you manufactured at Beaver Dam?

A. That I could not specifically do, as my trade extended over a considerable territory. If I had my books to give you the name of my customers, that would give you some idea.

Q. 38. Can you give the name of a single person to whom you sold a collar-pad constructed at Beaver Dam?

A. Identically, I don't think I could; that is, knowingly, because I couldn't tell to a surety whether such parties had them or not; there was a few collars that I used to buy, they would be
141 already padded; the most of the collars I made myself.

Q. 39. What became of your former, upon which you made your collar-pads at Beaver Dam?

A. Well, that is something that I couldn't tell you, no more than I could of the rest of my tools; I left them in charge of my wife, and they were disposed of in various ways.

Q. 40. Did you ever see the complainant in this suit manufacture one of his collar-pads?

A. I have seen them in process of manufacturing.

Q. 41. When and where?

A. The first time, I think it was in 1869 or 1870, I couldn't tell which; it was about the time that he commenced manufacturing there at Grand Rapids. Then I was over there last November, I think, or September, I can't tell which—some three or four months ago.

Q. 42. For what purpose was you there in his shop, some three or four months ago?

A. Well, in talking with this harness-maker, I can't call his name, Voss, I think, that was what brought my mind to it, and in passing by his shop to exhibit my collar, the door was open, and they were to work, and I stepped in out of friendship, I suppose, to see how he was getting along, to see how he succeeded with the sale and manufacture of his pad.

Q. 43. Did you have any talk with Mr. Voss, the defendant in this suit, in reference to this suit?

A. Well, the suit over there; he was telling me about it; said he

had been prosecuted for an infringement; I asked him to show me his pad; he done so, and I told him that I thought he needn't give himself no alarm, for I thought that form of pad had been made for years.

142 Q. 45. Did you tell him how many years?

A. Well, I told him that I had made pads similar to it since 1861 and 1862; that is, at times.

Q. 45. Did he say anything to you, or you to him, about the sole-leather pad?

A. Yes; he spoke of this pad being manufactured here; this, I suppose, to be the one he referred to.

Q. 46. Did you tell him that you had manufactured the sole-leather pad also, as early as 1861 and 1862?

A. Yes.

Q. 47. Explain a little more fully the way you manufactured a pad out of sole leather.

A. Well, whittled out a pine block; took a pine block and whittled out a form; placed a piece of the soft part of sole leather—that which I could make give; set on it; drawed the edges over with pinchers, and tacked it around, the same as you would crimp a boot; then after it became partially dried I took a hard substance—I couldn't tell what I used; a hard substance, as wood or some substance like that, that was smooth, and rubbed the leather down, and made it set smooth to the block.

Q. 48. Then the only preparation you made was to wet the leather and put it into the form, and rub it till it was partially dried, was it?

A. Yes; after drawing it over the edges and tacking it there we had to retain it there till it was dry.

Q. 49. Is not the model, Complainants' Exhibit B, constructed of an outer and inner piece of leather with a filling between them?

A. Yes; it is.

143 Q. 50. You say that Exhibit "B" is not constructed in accordance with complainant's specification; would you say that Defendant's Exhibit "3" is constructed in accordance with Complainant's specification?

A. No; I should say it was not.

Q. 51. Do you claim to be an expert at reading specifications or letters patent?

A. I am not a person that would be counted to give advice on subjects of that nature, still I have my own reasoning faculties which I would exert; I have my own mind relative to it.

Q. 52. Did not Mr. Voss request you to go and see Mr. Fisher and see what kind of a pad he was manufacturing?

A. No; for I knew before; I had been in his shop several years before.

Q. 53. When was you first in his shop?

A. As I told you before, I think it was in the fall of 1869 or 1870; I can't tell which; I was there selling goods.

Q. 54. When was you there again?

A. I was there frequently; all the time I was East manufacturing goods; I usually made two or three trips a year.

Q. 55. Did you go to Mr. Fisher's at the request of Mr. Voss?
A. No; I did not.

Redirect examination:

R. D. 56. What sort of a collar-pad was Fisher manufacturing when you were at his shop in 1869 and 1870, and at other times after that?

A. He was making this pad, Complainant's "Exhibit B;" he was making them the last time I called on him; exactly the same as he was the first time I called on him.

[SEAL.] CHARLES H. STEVENS.

144 Subscribed and sworn to before me, this 7th day of January, A. D. 1879.

A. O. BOND,
Notary Public.

JAMES F. WALSH, a witness produced on the part of the defendant, being first duly sworn, deposes, and says, in answer to interrogatories to him propounded by E. A. WEST, Esq., as follows:

Q. 1. State your name, age, residence, and occupation?

A. My name is James F. Walsh; 41 years old; Darlington, Wis.; harness maker. Have been a harness maker about twenty-five years.

Q. 2. Are you acquainted with the parties to this suit?

A. No, sir; I am not; neither of them.

Q. 3. Look at the collar-pad now shown you, marked defendant's "Exhibit I," and state what you know, if anything, relative to the manufacture, sale, and use of such pads.

A. This pad is about the same make of pad that we have generally made for our common collars, formed similar to this by means of placing them in the collar when collars are first made; or even repairing old ones. My plan of making this style of pad has been to get leather of suitable thickness and size, and after the collar is ready for what we call the finish, we take a piece of leather and attach it to the collar with similar straps. This piece of leather we put on the top of the collar flat, allowing sufficient in width to turn up, both front and rear; we then put the pad in water, while attached to the collar, buckle the collar, and place the collar, together with the pad, on a collar block; we then use a mallet, and drive the collar down on the block; when the collar is driven down sufficently tight, and the proper form given to the collar, the collar re-
145 maining on the block about half an hour, we take the collar off the block, and find the top pad in suitable form, except the edges being turned up. The pad, at that period, being sufficiently damp, we turn up the front and rear portion, usually by hand, forming it by turning it over the best way we can by hand, which usually answers the purpose. The result of this process leaves a pad in shape similar to this.

Q 4. When and where did you first make collar-pads, as described in your last answer?

A. I first made such collar-pads in Galena, Ills., as near as I can recollect; it must have been 1852 or 1853. I have made them, the next place, I believe, was Mineral Point, Wis., as near as I can recollect, in the winter of 1855–6. I afterwards made them in Hazel Green, Wis., as near as I can recollect, in the year 1858. I have made them from [that] time ever since.

Q. 5. Did the pads, so made by you, go into use?

A. Yes, sir.

Q. 6. State whether or not they retained their form in use?

A. They did not; from the fact that there was but one piece of plain leather, and subject to being twisted by the pressure of the hame strap on the top of the collar.

Q. 7. State whether, in use, the turned up ends of the pad remained substantially in the position they were when manufactured.

A. As a general thing, they did not. Where we used a heavy piece of leather, and took special pains to turn them up, front and rear, they usually retained a fair shape. Where light and inferior leather was used the edges usually fell down, and got into bad shape; in fact, they would not retain the original shape given them for only a short time.

146 Q. 8. Look at the collar pad now shown you, marked Exhibit C, Complainant's Proofs, and state whether you have manufactured such pads, or pads similar to it, consisting of a single piece of heavy leather, with a metal stiffening on the back.

A. I have manufactured a pad with two pieces of leather, with a metal plate stitched 'tween, the metal plate extending between the inner and outer pieces of leather in such manner as to give a stiffening surface to the body of the pad; that is, the stiffening surface extends to within about a half or three-quarters of an inch of the entire surface of the pad.

Q. 9. When and where did you first make such a pad?

A. As near as I can recollect it must have been in the spring or summer of 1858, in Hazel Green, Wis. I might have made, maybe, half a gross of such pads, which I offered for sale, and sold a greater part of them.

Q. 10. State whether you afterwards made pads consisting of a single piece of leather, with a stiffening similar to Exhibit C.

A. No, sir; I did not.

Q. 11. Have you obtained letters patent of the United States for improvements relating to your business; if so, how many?

A. Yes, sir; two.

Q. 12. Have you examined, and do you understand, Defendant's Exhibit "Fisher Copy," now shown to you?

A. Yes, sir; I think I do.

Q. 13. Look at Defendant's Exhibit 2, and state whether, in your opinion, it is made in accordance with such specification.

A. My opinion is that it is not. In the first place, as I read the specification, it specifies two pieces of leather with a cavity or

147 vacant space to admit of some mode of stuffing hay or some other suitable material. This pad, Exhibit 2, I find has no such stuffing as is specified in this claim; this pad, Exhibit 2, being

in my opinion what we call a solid pad. I also find this pad, Exhibit 2, seems to be turned up front and rear from a half to three-quarters of an inch, as near as I can judge, higher than the center of the top or outer piece. I would judge, from the appearance of this cut or drawing of Exhibit Fisher Copy, this pad was originally intended to have an even top surface. This flaring top surface of a pad is of vast importance for holding the collar pad securely to the collar. Where the top surface is smooth or level, we find it a very difficult matter for the top pad to retain its proper position while working.

Q. 14. So far as you can judge from its appearance, is the pad, Complainant's Exhibit B, like or unlike Defendant's Exhibit 2?

A. As far as my judgment goes, they seem to be one and the same thing.

Q. 15. State whether or not stuffed collar-pads were in common use prior to the year 1868.

A. They were in use prior to that time.

Q. 16. Did you make such pads prior to that time; and if so, what were they stuffed with?

A. I did. They were stuffed with hair, moss, &c.

Q. 17. Suppose this pad marked Defendant's "Exhibit 3" had a lining made of a single piece properly fitted, would it, in your opinion, be such a pad as is shown and described in Defendant's Exhibit "Fisher Copy"?

Objected to by complainant's counsel as incompetent.

148 A. My opinion is, that if the inner lining of the "Exhibit 3" was a continuous piece, crimped in proper form, and made up what we would term mechanically, it would be a very similarly constructed pad to this "Fisher copy."

Q. 18. Is this Complainant's "Exhibit B" a stuffed pad?

A. No, sir; I think it is not.

Q. 19. You stated that you manufactured and sold in 1868 collar pads, composed of two pieces of leather, with a piece of sheet metal between them; state whether you made and sold such pads in subsequent years; and, if so, in what years and how long?

A. I think I have made them pads each and every year from that time continuously up to three years ago, and have sold such pads during all that time. I was at Hazel Green, Wis., during all that time.

Q. 20. Did you obtain a patent for that pad; and, if so, when?

A. I did. October 4th, 1870, I believe, is the date.

Q. 21. State whether your said patent, as well as the reissue thereof subsequently obtained, correctly shows and describes the collar pads which you made and sold in 1868, consisting of two pieces of leather with a piece of sheet metal between them?

A. The first few pads I made; I don't [know] how many, but very few, was made somewhat different from what I subsequently made; the greater portion of what I made in 1868 were made substantially like the patent; the few that I made originally had a piece of metal stitched between the upper and lower pieces of leather, substantially the same as I subsequently made.

Cross-examination of said witness by EDWARD TAGGART, Esq.:

Q. 22. When did you go to Hazel Green to live first?

A. As near as I can recollect it was 1858 or 1859.

Q. 23. What did you commence doing when you first went three?

149 A. I think the first work I done when I went there was carriage trimming.

Q. 24. About how long did work at that?

A. A few weeks.

Q. 25. Do you recollect the month that you commenced the manufacture of collar pads with a metalic lining?

A. I do not.

Q. 26. Was you doing business for yourself at the time?

A. I was.

Q. 27. Did you have men to work for you; if so, how many, and what were their names?

A. Yes; I had some hands; two or three, probably; as near as I can collect their names were George Armstrong, John Walsh, and Lewis Metzer; they were with me part of the time I was manufacing such collars.

Q. 28. Can you give the name of any person to whom you sold collar pads manufactured with a metalic plate?

A. Crawford, Mills & Co., Hazel Green, Wis.; James Kinsella, Sinsinawa Mounds, Wis.

Q. 29. Can you give dates that you made sales to the parties named in your last answer.

A. I cannot; but it was near the date of my first making.

Q. 30. Have you any memorandum to refresh your memory as to date of the manufacture and sale of these first collar pad collars manufactured with a metallic plate?

A. Not with me; by reference to my book I could establish it very closely.

Q. 31. Is not Complainant's "Exhibit B" constructed of

150 an outer and inner piece of leather with a filling between them?

A. There appears to be a filling of a solid nature between the outer and inner piece.

JAMES F. WALSH.

Subscribed and sworn to before me, this 7th day January, A. D. 1879.

[SEAL.] O. W. BOND,
Notary Public.

By consent of counsel an adjournment was had till Wednesday, January 8th, 1879, at half-past nine o'clock a. m.

O. W. BOND,
Notary Public.

WEDNESDAY, *January 8th*, 1879, half-past nine o'clock a. m.

Examination resumed pursuant to adjournment.

Present: As before.

DAVID J. POWERS, a witness produced on the part of the defendant, being first duly sworn, deposes and says, in answer to interrogatories to him propounded by E. A. WEST, Esq., as follows:

Q. 1. State your name, age, residence and occupation.

A. David J. Powers; 64 years; Chicago, Ills.; mechanical engineer.

Q. 2. What opportunity, if any, have you had for becoming familiar with patents, and patented inventions?

A. I have been engaged in mechanical pursuits the most of my life, involving both a theoretical and practical knowledge of the same; have had a good deal to do with patents, and patented inventions, and have often been called as an expert witness in patent litigations before the United States courts.

151 Q. 3. Have you examined, and do you understand, the papers now shown to you purporting to be a copy of the specification and drawings of letters patent of the United States to C. J. Fisher, dated May 4th, 1869, No. 89646, and marked Defendants Exhibit "Fisher Copy"?

A. I have examined said exhibit "Fisher Copy" and understand the same.

Q. 4. Look at the collar pad now shown to you, marked Exhibit "B," Complainant's Proofs, and state whether or not it is made substantially in accordance with the said specification and drawings, Exhibit "Fisher Copy," and give your reason for any opinion which you express.

A. On examination of said Exhibit "B," and comparing the same, with the description and drawings of the patent exhibit, I do not find it to be like the device described and shown in said Exhibit "Fisher Copy," or substantially like it.

The specification describes a pad that is stuffed with hay or other suitable material, and a pad or device of that kind, in order to be stuffed, necessarily has to be made a receptacle, in fact, into and between which the stuffing can be introduced and secured, as is seen in the stuffing of a horse collar, or saddle, or cushion.

This Exhibit "B" it will be noticed is composed of solid layers of leather or something of that character, thus rendering it nearly or quite as solid, or hard as it would be if composed of a single piece of thick leather, thinned down at the edges and bent into the form desired.

Thus I do not find the Exhibit "B" to be a stuffed pad of any kind as contemplated in the patent exhibit.

152 The patent recites that the leather used in the under side being crimped, in order to obtain the desired shape, this language presupposes a piece of leather used for the under side of the pad sufficiently thick and firm to be capable of being crimped into a peculiar shape, whereas the leather shown upon the under side of the pad is, obviously, sheep-skin, which is well known to be so flexible and loose grained that it would not retain any crimped shape, after being taken out of the mould, where crimping is effected, unless cemented to and secured to a substantial form, as in the case of

pad, "Exhibit B," and, therefore, it will be noticed that the crimping in said exhibit has been applied to the substantial leather portion of said pad, and in that way a stricture has been made to receive the limber underside leather and to hold it in place. Thus, the crimping was obviously upon the main structure of the pad in the first instance, and only incidentally upon the sheep-skin lining or under side of the pad, and thus in this respect it does not follow the language of the specification.

All appearances go to show the pad was formed by building up several layers of leather in a solid mass and then applying a layer of thin leather upon the top and bottom, and compressing the same together in a mould, the entire mass having been previously saturated with cement or paste, or something to firmly attach the several parts together in one compact mass, differing altogether in its manner of construction and also in character when constructed from what is known as a stuffed pad.

The location of the strap C in the second figure of the drawing, together with the lack of any shading upon the ends of figure
153 1, shows conclusively that the top of said pad must have been level across, fore and aft, or nearly so, instead of being sunk down saddle fashion, as in "Exhibit B."

For the foregoing reasons, and others that probably might be added, I do not find "Exhibit B" to correspond with, or substantially with, the device described, shown, or claimed in the patent exhibit.

The specification recites that straps D D are passed through the loops in strap C to prevent the upward displacement of the pad, and this also goes to confirm my theory that the top of the pad was level across, and such level form was a natural one when space was required for stuffing, but was unnecessary when making a solid leather pad, in which case they carried down the center as we see in "Exhibit B," and in this respect departed from the language and showing of the patent, because they were making a different thing from what the patent described or showed, to wit, a solid leather pad, instead of a stuffed one.

Q. 5. Look at the collar pad, Defendant's "Exhibit 2," which has been partially cut open, and state whether or not, so far as you can judge from appearances, the pad, "Exhibit B," Complainant's Proofs, is the same as Defendant's "Exhibit 2."

A. On a comparison of said pads with each other, I think they are identical with each other in all material respects, both being composed of leather built up in layers, and cemented and pressed together into form and solidity, and covered with outside sheets of flexible leather to give them smoothness and a proper finish. Of course, I cannot absolutely know the precise internal structure of "Exhibit B," but, from all external appearances, I have no doubt it is the same as Defendant's "Exhibit 2."

154 Q. 6. Look at the pad now shown to you, marked Exhibit "C," Complainant's Proofs, and state whether in opinion it is substantially like or unlike the pad described and shown in the exhibit, "Fisher Copy," and give your reasons for any opinion you may express.

A. On comparing the pad, Exhibit "C," with the one described and shown in said patent copy exhibit, I find them to be wholly unlike each other in all material respects, except, perhaps, the side and top straps have some resemblance to each other. Also the outline of form between the two pads has some similarity, but here the similarity ends.

Pad "C" is made from a single piece of leather in its general structure of nearly or quite a uniform thickness, except at its lower edges, which are slightly thinned and, being of a single thickness of leather, has no capability of being stuffed or filled with hay or any other suitable stuffing material.

The same piece of leather used upon the under side of Pad "C" is also used upon and composes the upper side, the pad being of a single piece of leather.

True, this one piece of leather upon Pad "C" is crimped into much the same form as shown in the patent copy exhibit; but said patent exhibit, it will be borne in mind, does not claim crimping broadly, or describe it as the main merit of the invention, but simply refers to an inner crimped lining, or the leather used upon the under side of the pad and in their construction of a stuffed pad, the crimping of the under lining was clearly all that was necessary; but in making a solid pad like Exhibit "C" out of one piece of leather, and without any stuffing or filling, then the natural thing to
155 do was to crimp the whole piece into the form desired, as in Exhibit "C."

Thus, from the foregoing comparison, it will be seen that Exhibit "C," both in its construction and character in all essential respects is an entirely different article or pad from the one shown, described, and claimed in said patent copy exhibit.

Exhibit "C" has a metallic covered plate upon its top, obviously for the purpose of giving strength and support, and keeping the under side free from wrinkles and roughness when in use, and in this respect, meeting in this way, the contemplated necessity of the stuffing in the patent copy exhibit. This plate in a measure accomplishes the same result as the stuffing, but clearly by an entirely different device.

The ornamental piece of top leather upon Exhibit "B" has a slight external resemblance to the metallic plate upon Exhibit "C," but is not required for stiffness or strength apparently, but is only used for ornament and to supply the loops for the collar or hamestraps.

The said metallic plate also serves an important purpose in retaining the rising circular edges of the pad forward and back.

Q. 7. State whether you find in this pad, Exhibit "C," an inner lining which is separate and distinct from the other parts of the pad.

A. I do not find any inner lining whatever, the pad being composed of a single thickness of leather.

Q. 8. State whether, in your opinion, an inner lining separate and distinct from the other parts of the pad is an essential element

of the neck-pad described and claimed in the exhibit, "Fisher Copy."

156 A. An inner lining is clearly an essential and necessary part, as there must be an inner lining and an outer cover secured to each other at their edges, to form a receptacle into which a stuffing of hay, or other suitable material could be introduced and retained.

Q. 9. Do you find in this pad, Exhibit C, a stuffing of hay or any other material?

A. No; neither hay nor any other material used for stuffing pads or cushions.

Q. 10. Look at the pad now shown you, marked Exhibit D, Complainant's Proofs, and state whether, in your opinion, it is substantially like or unlike the neck-pad described and claimed in the Exhibit Fisher Copy, and give your reasons for any opinion you may express.

A. It is substantially unlike the neck-pad described and claimed in said patent copy exhibit, and for the same reasons that I gave in my last answer, inasmuch as Exhibits D and C are substantially alike in all material respects; Exhibit D has no top hame or collar straps; by my last answer, I meant my answer to qst. 6.

Q. 11. In your opinion, would a mechanic, following the instructions of this Exhibit, Fisher Copy, manufacture a pad like either of these exhibits, C and D?

A. No; clearly not.

Q. 12. Is there, in your opinion, anything in this Exhibit Fisher Copy by the following of which a mechanic would work out a pad like either of these exhibits, C or D?

A. No, certainly not; for the reason that the instruction in the patent copy is for an entirely differently constructed article,

157 and more particularly because the specification states that "for this purpose pieces of leather, cloth, or other material, have heretofore been used, but without the desired success." Now this is direct instruction to the mechanic, that a single piece of leather, like what is used in Exhibits C and D, had been used and proved a failure, or at any rate not a success, therefore it is fair to conclude that a mechanic, following the instructions of said patent, would never construct such a device as those shown in Exhibits C and D, as the instruction in said patent, both general and specific, is directly opposed to the making of such articles as C and D.

Q. 13. Do you mean by your last answer that the Exhibit Fisher Copy states that pads had before been made of a single piece of leather, with a metal stiffening, as in Exhibits C and D?

A. No; I simply mean that the patent recited that pads had been made of a piece of leather or other material, the object of the inventor obviously being to show that more than one piece of leather must be employed with filling between; the object of the filling being stated to keep the under side of the pad smooth and free from wrinkles, &c.

Cross-examination of the witness by EDWARD TAGGART, Esq:

Q. 14. You have had considerable experience, have you not, in testifying as an expert in patent cases?

A. Yes; considerable.

Q. 15. Will you please to explain what you understand to be the meaning of the term mechanical equivalent, as applied to a patented invention or machine?

A. I understand it to be a device like or substantially like
158 some other device to which it is equivalent; something that amounts to the same thing in substantially the same way.

Q. 16. Give an illustration.

A. Driving machinery by bands is equivalent, in general respects, to driving it by cog gearing.

Q. 17. Would conveying power by an endless chain be equivalent to conveying power by a tumbling-rod?

A. It might be held to be in some cases, but ordinarily a tumbling-rod is a different device from an endless chain or band.

Q. 18. Give an instance of where they might be held to be equivalent.

A. A party having a machine to propel might recite that it could be driven by an endless chain or other well-known mechanical means. In such a case I should consider to be an equivalent means for driving a machine.

Q. 19. Do you understand that it would be a mechanical equivalent within the meaning of the patent law?

A. An endless chain and a tumbling-rod, separately compared and considered, I presume, would not be considered equivalents for each other, being different mechanical devices; but when applied, as I have before stated, under certain circumstances, they might be held to be equivalent in results.

Q. 20. If the results accomplished are the same in two mechanical devices or machines, would you say they were mechanical equivalents?

A. If accomplished in the same way, or substantially the same way, I should say they were equivalents; otherwise not.
159 The same result is accomplished in a good many different ways and by different devices often.

Q. 21. What do you understand to be the meaning of the word "function," as applied to a patented machine or invention?

A. I understand the word "function" to relate to purpose and result, when so applied.

Q. 22. Does not Complainant's Exhibit "B" have an inner lining of crimped leather and also an upper leather surface, with a filling between them?

The complainant's device has an inner lining of leather or sheepskin and an upper covering of leather, together with a filling or thickening of leather between them.

Q. 23. From the specification of complainant's invention, and from the drawings attached thereto, do you understand that complainant's pad is constructed substantially like the Defendant's Exhibit "3"?

A. I understand from said specifications and drawings that complainant's pad is nearly straight or level fore and aft, but I do not understand from said patent that the lower or inner lining was pieced at its forward and back ends. as in Exhibit "3."

The straight or level portion referred to was the top of the pad.

Q. 24. With the exception of the pieced ends, then, you would say that Defendant's Exhibit "3" was substantially the pad described and shown in complainant's specification and drawings?

A. No; I think the specification referred to and contemplated, an under lining of sufficient substance and thickness to admit of
160 being crimped, and of remaining so after being taken from the crimping machine, and not such a thin lining as is found in Exhibit "3," for it is obvious that such a lining would require no crimping, as it could readily be moulded into any form by the stuffing or filling. I will repeat that I consider the top longitudinal line, shown in Exhibit "3," to be substantially like what is shown and described in the patent exhibit "Fisher Copy," as the straps C and D, shown in figure 2 of the drawing, render obvious beyond any question.

Q. 25. Do you consider that there would be any material or substantial difference between a pad with a straight longitudinal line on top, and one with a concave top or saddle shape?

A. If the pad is a stuffed pad, there must obviously be space between the upper and lower covering, and there would be no substantial difference with the saddle-shaped pad, provided there was still remaining space enough between the top and bottom covering to admit of the stuffing required to make it like a cushion.

Q. 26. You would call Complainant's "Exhibit C" a collar-pad, would you not?

A. I suppose it may properly be called a collar-pad, in the common acceptation of language.

Q. 27. Is not the smooth inner surface produced by crimping a single piece of leather into the desired form, substantially as shown and described in the "Exhibit Fisher Copy?"

A. Yes; the inner surface of pad "C," as well as the outer surface of the same, is apparently produced by crimping the leather in the form we see it.

Q. 28. Is not pad "C" provided with straps, corresponding substantially with the straps B and C, shown in Exhibit "Fisher Copy"?

161 A. Yes; they appear to be substantially the same in both cases.

DAVID J. POWERS.

Subscribed and sworn to before me, this 8th day of January, A. D. 1879.

[SEAL.]

O. W. BOND,
Notary Public.

UNITED STATES OF AMERICA, *Northern District of Illinois:*

STATE OF ILLINOIS, } ss:
County of Cook, }

I, Oscar W. Bond, a notary public, in and for the county of Cook, State of Illinois, do hereby certify that the foregoing depositions of Charles H. Stevens, James F. Walsh, and David J. Powers, were taken by and before me, *de bene esse*, pursuant to the notice thereto annexed, at the time and place therein specified, said witnesses residing outside of the district in which said suit is brought, and is to be tried, and a greater distance than one hundred miles from the place of trial; that the parties to the said couse were present at the taking of the same, complainant by his counsel, Edward Taggart, Esq., and the defendant by his counsel, E. A. West, Esq., as therein appears; that before deposing, the said Charles H. Stevens, James F. Walsh, and David J. Powers, were each by me respectively duly sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid; that their respective depositions were reduced to writing by me from their respective statements, and the same duly subscribed to by them, respectively, before me as
162 therein appears, and that said depositions are taken on the part of the defendant to be used upon the hearing of a certain cause now pending in the circuit court of the United States for the western district of Michigan, wherein Charles J. Fisher is complainant, Willibald Voss, defendant.

And I do further certify that I am neither attorney nor of counsel for any of the parties in said deposition or caption named, and am in no wise interested in the result of said cause.

In testimony whereof, I have hereunto set my hand and notarial seal, this 8th day of January, A. D. 1879.

[SEAL.] O. W. BOND,
Notary Public.

Charges:

64 pp., 29 lines per page, 1,856 lines, 6 words per line, 11,736 words, @ 20c. per 100	23 50
Officer's certificate, express, &c.	2 50
	$26 00

My charges as above, twenty-six (26) dollars, paid by defendant.

O. W. BOND,
Notary Public.

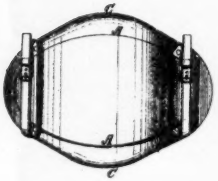
163 [Endorsed:] U. S. circuit court, west'n dis't Mich. Chas. J. Fisher *vs.* Willibald Voss. Depositions of Charles H. Stevens, James T. Walsh, and David J. Powers on the part of the defendant. Charges: 64 pp., 29 lines per page, 1,856 lines, 6 words per line, 11,736 words, @ 20c. per 100, $23.50; certificate and express, $2.50—$26.00. O. W. Bond, notary public. Opened by order of court, December 7th, 1880. Henry M. Hinsdill, clerk.

J. F. Walsh,

Collar Cap.

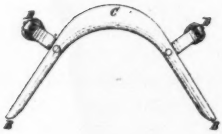
No. 108071. Patented Oct. 4. 1870.

Fig. 1.



No. 161.
Nos.
01.
Fichu } b. 166.

Fig. 2.



Witnesses:

Inventor:

J. F. Walsh

Per

Attorneys

164 EXHIBIT 8. DEFENDANT'S PROOFS.—CHARLES A. RENWICK, *Special Examiner.*

Department of the Interior, United States Patent Office.

(Vignette.)

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the letters patent granted James F. Walsh October 4th, 1870, No. 108,071, for improvement in caps for horse collars.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed, this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

165 No. 108,071.

The United States of America to all to whom these letters patent shall come:

Whereas James F. Walsh, of Hazel Green, Wisconsin, has alleged that he has invented a new and useful improvement in caps for horse collars, and has made oath that he is a citizen of the United States; that he verily believes he is the original and first inventor or discover of the said improvement, and that the same hath not, to his knowledge and belief, been previously known or used; has paid into the Treasury of the United States the sum of thirty-five dollars, and presented a petition to the Commissioner of Patents praying that a patent may be issued therefor:

These are therefore to grant to the said James F. Walsh, his executors, administrators, or assigns, for the term of seventeen years from the fourth day of October, one thousand eight hundred and seventy, the full and exclusive right and liberty of making, using, and vending to others to be used the said improvement, a description whereof is given in the annexed schedule, and made a part of these presents.

In testimony whereof, I have caused these letters to be made patent, and the seal of the Patent Office to be hereunto affixed.

Given under my hand at the city of Washington, this fourth day of October, in the year of our Lord one thousand eight hundred and seventy, and of the Independence of the United States of America the ninety-fifth.

[L. S.] W. T. OTTO,
Acting Secretary of the Interior.

Countersigned and sealed with the seal of the Patent Office.

SAM'L S. FISHER,
Commissioner of Patents.

(Here follows diagram, marked p. 166.)

167 UNITED STATES PATENT OFFICE.

JAMES F. WALSH, of Hazel Green, Wisconsin.

Improvement in Caps for Horse-Collars.

Specification forming part of letters patent No. 108,071, dated October 4, 1870.

To all whom it may concern:

Be it known that I, James F. Walsh, of Hazel Green, in the county of Grant and State of Wisconsin, have invented a new and useful improvement in horse-collar caps; and I do hereby declare that the following is a full, clear, and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawing, forming part of this specification.

This invention relates to improvements in caps for horse-collars, to be worn upon the upper part of the neck, under the top of the collar; and consists of a broad saddle-shaped cap, made of an tnternal stiffening shape, consisting of an iron plate and external covering of leather, with turned-up edges, front and rear, under an arrangement which is intended to prevent chafing or injury to the animal in a greater degree than those now in use will do, all as hereinafter more fully specified.

Figure 1 is a plan view of my improved collar-cap, and Fig. 2 is an end elevation of the same.

Similar letters of reference indicate corresponding parts.

I take an elliptical-shaped plate, of sheet metal, preferably, having a considerable degree of elasticity, and bend it into the proper form, as shown in Fig. 2, to rest on the back of the neck, extending down the sides a short distance, and cover it on both sides with strong stiff leather, stitching the same together and around the edge of the metal plate, as shown by the lines A, making the under piece larger than the upper one, to form a broad margin, B, around the central stiff part, as clearly shown in Fig. 1. This margin I shape so as to turn up front and rear, and down toward the points, as shown at C, so that in case of any movement of the cap and collar on the neck lengthwise it will slide over the skin and mane of the animal without injury to it. A channel is formed in the under leather cover for the stitches to cover them smoothly.

The stiffening-plate of metal preserves a smooth under surface at all times bearing on the neck, calculated to be much more easy to the animal than is the case with caps without the stiffening-plates, which soon have creases and ridges formed in the under surface by the cramping and straining of the collar-straps and hames on the collars and caps. Horses very frequently have sores formed on the backs of the necks by the chafing of the collars or caps, which are entirely avoided by my improved caps. My improved cap may be narrowed or expanded to fit broad or thin necked animals. By the use of this cap, collars that are too small for the ends to meet over the top of the neck may be used by connecting them with straps to

let them out, the necks being protected from the straps by the said cap. The straps D are provided for the purpose of preventing the cap from slipping out from under the collars.

Having thus described my invention, I claim as new and desire to secure by letters patent—

The improved detachable collar-cap herein described, consisting of a flexible metal stiffening-plate, covered with leather, turned up around the edge, all as shown and described.

J. F. WALSH.

Witnesses:
J. M. CHANDLER,
WILLIAM CHANDLER.

168 EXHIBIT 9. DEFENDANT'S PROOFS.—CHARLES A. RENWICK, *Special Examiner.*

Department of the Interior, United States Patent Office.

(Vignette.)

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this office of the reissue letters patent granted George Lauz November 13th, 1877, No. 7951, for improvement in caps for horse collars.

In testimony whereof, I, W. H. Doolittle, Acting Commissioner of Patents, have caused the seal of the Patent Office to be hereunto affixed this fifteenth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[SEAL.] W. H. DOOLITTLE,
Acting Commissioner.

169 Reissue. No. 7951.

The United States of America to all to whom these presents shall come:

Whereas James F. Walsh, of Hazel Green, Wisconsin, assignor to George Lauz, has presented to the Commissioner of Patents a petition praying for the reissue of letters patent for an alleged new and useful improvement in caps for horse collars (for which letters patent were issued to him dated October 4, 1870, which letters patent having been surrendered, the same have been cancelled, and new letters ordered to issue to said assignee on an amended specification), a description of which invention is contained in the specification, of which a copy is hereunto annexed and made a part hereof, and has complied with the various requirements of law in such cases made and provided; and

Whereas, upon due examination made, the said claimant is adjudged to be justly entitled to a patent under the law:

Now, therefore, these letters patent are to grant unto the said George Lauz, his heirs or assigns, for the term of seventeen years from the fourth day of October, one thousand eight hundred and

seventy, the exclusive right to make, use, and vend the said invention throughout the United States and the Territories thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the city of Washington this thirteenth day of November, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the United States of America the one hundred and second.

[L. S.] A. BELL,
Acting Secretary of the Interior.

Countersigned:

[SEAL.] ELLIS SPEAR, *Commissioner of Patents.*

(Here follows diagram, marked p. 170.)

171 UNITED STATES PATENT OFFICE.

JAMES F. WALSH, of Hazel Green, Wisconsin, assignor to George Lauz.

Improvement in Caps for Horse-Collars.

Specification forming part of Letters Patent No. 108,071, dated October 4, 1870; Reissue No. 7951, dated November 13, 1877; application filed October 31, 1877.

To all whom it may concern:

Be it known that I, James F. Walsh, of Hazel Green, in the county of Grant and State of Wisconsin, have invented certain new and useful improvements in caps for horse-collars; and I do hereby declare that the following is a full, clear, and exact description thereof, reference being had to the accompanying drawings, making part of this specification, and to the letters of reference marked thereon, like letters indicating like parts wherever they occur.

To enable others skilled in the art to construct and use my invention, I will proceed to describe it.

This invention relates to caps or pads for horse-collars; and the invention consists in making the cap or pad with an elastic plate of metal and a smooth leather lining, as hereinafter more fully set forth.

Figure 1 is a perspective view of the metal plate detached. Fig. 2 is a longitudinal vertical section, and Fig. 3 a perspective view of a cap complete as made with my improvements embodied therein.

Heretofore this class of articles have usually been made of leather, stuffed with hair or some similar substance, thus forming a sort of cushion, and hence called a "pad," though sometimes they consisted of one or more thicknesses of leather without any stuffing.

When thus made the leather was apt to wrinkle in use, thus making the surface which bears upon the animal's neck rough and irregular, and thereby the skin was liable to be abraded, thus making the neck sore, causing pain to the animal, and lessening its efficiency.

The object of the present invention is to overcome or remove these objections by producing a pad, or, as I prefer to term it, a

J. F. WALSH,

Assignor to G. Lauz.

Cap for Horse-Collar.

No. 7,951. Reissued Nov. 13, 1877.

Fig. 1.

Fig. 2.

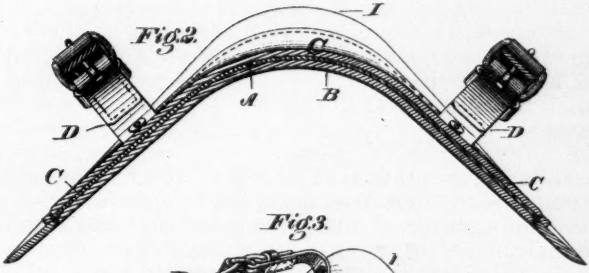
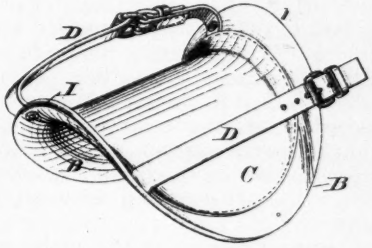


Fig. 3.



No. 161
Voss
vs.
Fisher
p. 170

Witnesses:

Donn P. Twitchell

Will W. Dodge.

Inventor:

James F. Walsh

by Dodger & Son

Attys

"cap," which, while being elastic, shall also present and retain a smooth even surface in contact with the neck of the animal.

To accomplish these results, I take a plate of sheet metal, preferably having a considerable degree of elasticity, and bend it to the proper form, as represented in Fig. 1, to rest on the neck and extending down the sides a short distance. To the under side or surface of this metal plate A is secured a sheet of leather, B, which is somewhat larger than the metal plate A, and is so arranged as to project more or less around the edge, thus forming a margin, I, as shown in Figs. 2 and 3. This margin I turn up at front and rear, as shown in Fig. 3, but at the sides it extends downward, as shown in Fig. 2, so as to fit under the collar.

The lining or leather sheet B is made of strong stiff leather, and should be secured to the metal plate in such a manner as to keep it smooth and prevent it from wrinkling, so that, in case of any movement or slipping of the cap and collar on the neck, it will slide over the skin and mane of the animal without injury, and so that, when resting on the neck, it will have a smooth and even bearing thereon, as it would not have if wrinkled, or if its surface was uneven and rough.

The metal plate A and the lining B may be fastened together in any suitable manner; but the plan which I prefer is shown in the drawings, and consists in stitching together two pieces of leather, the lining B and another piece, C, which latter is slightly larger than the metal plate A, and is placed over it, the stitching extending close around the edge of the plate, as shown by the dotted line on Fig. 3, the metal plate being thus held in position between the two pieces of leather, as shown in Fig. 2. Straps D are secured to the edges of the cap in the usual manner, for fastening it to the collar and keeping it in place when in use.

It will readily be seen that by this construction the metal plate preserves a smooth under surface at all times, rendering the cap much more easy to the animal than when made without the stiffening-plate, in which case they soon have creases and ridges formed in the under surface by the cramping and straining of the collar-straps and hames on the collar and caps.

By using an elastic metal plate the cap may be compressed or expanded to fit thick or thin necked animals, or to adapt it to the varying conditions of the same animal.

Having thus described my invention, what I claim is—

172 1. A cap for horse-collars consisting of a flexible metal plate with a smooth leather lining, substantially as described.

2. The combination of the flexible metal plate A and the smooth leather lining B, provided with the upturned edges I, substantially as set forth.

3. The combination of the leather lining B, the metal plate A, and the leather covering C, all united, substantially as shown and described.

JAMES F. WALSH.

Witnesses:
A. B. P. WOOD.
DANIEL BOWMAN.

173 U. S. Circuit Ct., West. Dist. Mich. In Equity.

FISHER *vs.* VOSS.

Defendant's Testimony.

174 UNITED STATES OF AMERICA:

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLABALD VOSS, Defendant.

Depositions of witnesses produced, sworn, and examined in the above-entitled cause on the part and behalf of the defendant, in pursuance of the stipulation on file in said cause, and the order based thereon, at the office of Renwick and Walker, No. 8 Canal street, in the city of Grand Rapids, on Saturday, the 18th day of January, A. D. 1879, at 10 a. m.

The complainant appeared by Edward Taggert, his counsel.
The defendant appeared by Niram A. Fletcher, his counsel.

WILLABALD VOSS, a witness on the part of the defendant, being duly sworn and examined, testified as follows:

My name is Willabald Voss; my age is thirty-seven years; I reside in the city of Grand Rapids, Kent county, Michigan; am a harness maker; have been engaged in the business of manufacturing horse collars since 1856.

Q. How long have you known the complainant, Fisher?

A. About eight years.

Q. In what business has Fisher been engaged during that time?

A. Manufacturing collar-pads and boxes.

Q. Can you think of any other enterprise in which he has been engaged, to your knowledge?

A. Yes, sir; he was manufacturing baloons once.

175 Q. Was it a baloon or a flying-machine?

Question objected to; immaterial.

A. I think he called it an air-ship.

Q. Do you remember the time when C. J. Kruger & Co. were manufacturing Fisher's collar-pads?

A. Yes, sir.

Q. Was Fisher working for them at that time, or any part of that time?

A. Yes, sir.

Q. How did the pad which Kruger & Co. were manufacturing at that time compare with Complainant's "Exhibit B," in its general appearance?

A. It was different altogether from this.

Q. How did the pad which C. J. Kruger & Co. were manufacturing at that time compare with the pad now shown you, in general appearance?

A. It was about like this.

Defendant's counsel now offers in evidence the pad shown the witness at the last question, and the same is received and marked "Defendant's Exhibit 4."

Q. In your opinion, is Complainant's "Exhibit B," manufactured in accordance with the specifications and drawings of Complainant's "Exhibit A"?

A. I would say no.

Q. Suppose a collar-maker, who had never seen a collar-pad, was given those specifications and drawings to make a collar-pad from, would he, in your opinion, produce such a pad as Complainant's "Exhibit B"?

A. No.

Q. Or would he produce such a pad as Complainant's "Exhibit C"?

A. No, sir.

Q. Or as Complainant's "Exhibit D"?

A. No, sir.

Q. In your opinion, would he produce such a pad as Defendant's "Exhibit 4"?

176 A. It would be such a pad, except the loop on the top would be different.

Q. Have you had much experience in selling pads, and much opportunity to observe the effect of use on different pads?

A. Yes, sir.

Defendant's counsel here offers in evidence a certified copy of the model in the matter of the letters patent granted to the complainant May 4, 1869, No. 89646, for a neck-pad for horses, and the same is received and marked "Exhibit 5," defendant's proofs.

Q. What effect has much wear on a pad manufactured like Defendant's "Exhibit 4 and 5," as to the producing of protuberances and wrinkles on the under side?

A. It causes wrinkles, and hurts the horse's neck.

Q. Have you one of those pads with you that has been subjected to considerable wear?

A. Yes, sir.

Q. Is the pad now shown you such pad?

A. Yes, sir.

Q. Did you ever handle in your business pads manufactured by complainant or Kruger & Co. under complainant's patent?

A. Yes, sir.

Q. To what extent?

A. Well, I might have seen three or four dozen a year; sold is what I mean.

Q. In your opinion is the pad now shown you a pad which was manufactured under the complainant's patent?

A. Yes, sir.

Defendant's counsel now offers in evidence the pad referred to in questions 17 and 20, and the same is received and marked "Exhibit 6, Defendant's Proofs."

177 Q. What effect has wear as to producing protuberances or wrinkles on the under side of the pad on such a pad as complainant's "Exhibit C?"

A. This will stay always smooth if there is firm stock put in.

Q. Is there any advantage in having the pad made saddle-shaped like complainant's "Exhibit C" and complainant's "Exhibit D" over a level top like Defendant's "Exhibits 4 and 5?"

A. Yes, sir; there is an advantage.

Q. What is the advantage?

A. A saddle-shaped pad will fit better in a collar and stay better to its place.

Q. Did you ever see any neck-pads manufactured prior to the 4th day of May, 1869?

A. Yes, sir.

Q. When was it, and where was it?

A. The first time Mr. Fisher came into my shop and wanted us to take hold of the patent and manufacture them; then I saw the first pad.

Q. Whether before that time (1869, May 4,) you used any cap or covering to place over the horse's neck and underneath the collar?

A. Yes, sir; I used them two years before.

Q. Whereabouts did you use them; I mean in this city or elsewhere?

A. I made them in Germany in 1855 until 1867; then I made them here in the city, Grand Rapids.

Q. Who were you working for in the city of Grand Rapids when you made them here?

A. For Frank Mattison.

Q. How did you make the covering which you used for a horse's neck at that time?

178 A. I took a piece of harness leather, wet it, and worked the front and hind end up, so as not to hurt the horse, the horse's neck, so not to gall the horse, and for particular customers I made quilted pads and stuffed them with hair, and turned the edges up as much as I could, and cut sometimes a piece—a diamond piece—out of the centre and sewed the edges of the hole together to give the edges a turned-up shape.

Q. In making pads out of a single piece of leather, what did you do in order to make the front and rear edges retain their turned up shape?

A. I wet the leather and forced it with a hammer handle up, and let it dry.

Q. Did you ever use any other means to make it retain its saddle shape with the edges turned; if so, what was it?

A. I cut out a diamond piece and sewed it up again, which brings up the edges naturally.

Q. Look at the pad now shown you, and see if it is manufactured in the manner last described?

A. It is just like it.

Defendants counsel now offers in evidence the pad last described,

and the same is received and marked "Exhibit 7," Defendant's Proofs.

Q. How long ago did you see pads manufactured like Defendant's "Exhibit 7"?

A. I made a few when I was battery saddler in the Prussian army.

Q. How long ago was that?

A. Sixteen (16) years ago.

Q. What would that process be called, among workers in leather, which you have described as wetting the leather, turning it out of its natural shape, and working it with a hammer handle or
179 some other way, to make it retain the shape in which you had placed it?

A. I would call that crimping.

On cross-examigation witness says:

Q. Who made Defendant's "Exhibit 7"?

A. One of my workmen.

Q. When?

A. About a couple months ago.

Q. How large a piece of leather was cut out of the center of this pad in order to make it assume its present form?

A. I don't know; I haven't seen that; it depends altogether on the firmness of the stock, how much wants to be taken out.

Q. For what purpose was this pad made?

A. That's made to use in horse collars.

Q. Is this the kind of pad which you are now manufacturing to use in horse collars?

A. No, sir.

Q. Was not this pad manufactured at your request, and for the purpose of being used as an exhibit in this suit?

A. Yes; I made this to use here, but I have made some like it before.

Q. The cutting out of this piece, in the centre, is to make it assume this form, and that is the object of cutting out that piece of leather?

A. Yes, sir.

Q. That is what causes the front and rear end to turn up and have such a smooth inner surface, I suppose?

A. Yes, sir.

Q. That was all that was done then to the piece of leather to constitute this pad?

180 A. Yes, sir.

Q. Where was you when you made the first pad in Germany?

A. I was in the city of Wesel.

Q. In what business was you engaged?

A. I was battery saddler.

Q. How long had you been battery saddler at that time?

A. Two years.

Q. What was your occupation before you became battery saddler?

A. I was a soldier.

Q. How long was you soldier?

A. Four years.
Q. Where did you get Defendants' "Exhibit 6?"
A. I got it in my shop.
Q. Have you any knowledge of when it was made, who made it, and what it was made for?
A. Yes, sir.
Q. Please state.
A. I think that is one of Mr. Fisher's pads; made by Mr. Fisher; it was made for a collar-pad, and when it was made I cannot tell.
Q. How do you know that Mr. Fisher made it?
A. His pads were made just like that, and his stamp is on it.
Q. Did you see him make it, or did any person tell you that he made it?
A. I did not see him make that pad; no person told me that he made it.
Q. Then you don't know whether he made it or not?
A. I believe that he made the pad on account of the stamp, and he made just such pads.
Q. How long have you had "Exhibit 6" in your possession?
A. I don't know.
Q. What is the name of the man who made "Exhibit 7?"
181 A. Fred. Christensen.
Q. How long did you work for Frank Mattison?
A. Only one year.
Q. What did you do next?
A. I started a harness-shop of my own.
Q. How long did you continue in this harness-shop of your own?
A. Eleven years.
Q. When was you thirty-seven years old?
A. July 7 last, (1878.)
Q. At the time Mr. Fisher called upon you to sell you an interest in his patent in 1869, what reason did you give him for not purchasing?
A. I could not tell any more on account of this; I had a pardner who tended to that kind of business.
Q. Are you familiar with patent specifications and drawings?
A. I never seen any such drawing until lately.
Q. What is the effect of wear upon a collar-pad made of leather, without any stiffening or backing?
A. Horses might get sore.

On redirect examination witness says:

Q. In answer to a question of Mr. Taggart's you said that nothing had been done to Defendants' "Exhibit 7" to make it retain its shape except to draw together its parts; after a diamond-shaped hole had been cut in it, was not the leather wet and the pad rubbed with hammer or some hard substance?

Objected to; leading.

A. It has to go through the same process as a single piece of leather would that is not cut in being made into a collar-pad.

Q. Has "Exhibit 7" been pressed in a die or form?
182 A. No, sir.
Q. Was the crimping that was done on that pad done by hand or machinery?
A. It was done by hand.
Q. In testifying this forenoon, did you say that you were a soldier in the Prussian army four years before you became a battery saddler?
(Objected to; incompetent; testimony itself shows what he swore to.)
A. I was soldier and saddler at the same time.
Q. When did you go into the Prussian army?
(Objected to, for the reason that he has already testified as to the thing enquired of.)
A. 1862.
Q. How soon after you went into the army did you become a saddler?
A. One year after.
Q. How long were you in the Prussian army altogether?
A. Four years.

On recross-examination witness says:

Q. Have you had any talk with your solicitor since the adjournment this forenoon in relation to what you testified?
A. Yes, sir.
Q. Please to state fully what that talk was.
A. Mr. Fletcher asked me whether I was saddler in the army, and then how long time I served besides.
Q. That, then, was all you remember that he said?
A. Yes.
Q. In answer to Mr Fletcher's question this afternoon you stated that "Exhibit 7" went through the same process to cause it
183 to assume its present form that a single piece of leather without a diamond cut out of it would, did you not?
A. Yes, sir.
Q. Then the smooth rounded surface at the front and rear end of "Exhibit 7" was not caused by cutting out the diamond-shaped piece?
A. Not all, but most of it.
Q. Would not a single piece of leather with no cut in it in the center, if put through the same process, assume precisely the same form as "Exhibit 7"?
A. Yes, sir; if it is a flanky piece of leather, with a good deal of stretch in it.
Q. Upon what was this "Exhibit 7" placed while it was being rubbed with a hammer handle?
A. I haven't seen that done.
Q. At what time of year did you leave the Prussian army
A. The first of November, 1866.
Q. Where did you go when you first left the army?

A. I went home.
Q. How long did you remain at home?
A. Seven (7) months.
Q. Where did you then go?
A. To the United States of America.
Q. What part of the United States?
A. Grand Rapids.
Q. In manufacturing your pads do you use a form?
A. I do now.

WILLIBALD VOSS.

184 Read over to witness and by him subscribed, in my presence, this 18th day of January, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

FREDERIC W. TUSCH, a witness produced, sworn, and examined on the part and behalf of the defendant, being sworn, testifies as follows:

My name is Frederic W. Tusch; my age is sixty-four years; I reside in the city of Grand Rapids, Kent county, Michigan; I am a harness-maker.

Q. How long have you been a harness-maker?
A. Forty-one years.
Q. Have you ever made any kind of a covering to go under a collar and on top of a horse's neck; and, if so, how did you make them?
A. I make them ten or twelve different kinds; I can't say how many.
Q. How long ago did you begin making pads?
A. Since '46.
Q. Have you ever made any pads with the edges turned up in the front and rear like Complainant's "Exhibit D"?
A. Yes.
Q. Did the pads which you made have a smooth inner surface, or did they not?
A. Yes; smooth inside.
Q. What did you do to the leather to make it turn up and retain its shape?
A. Shaved the sides out, make it wet and bound it up, or crimp it.
185 Q. How long ago did you make pads like you have just described?
A. In 1846, at Detroit, was my first work making collars in this county.
Q. For whom were you working?
A. For Cullom Brown.
Q. On what street?
A. On Jefferson avenue.
Q. Have you ever made any since 1846?
A. Yes; I have made them here in Grand Rapids.

Q. Were you engaged in the collar business constantly from 1846 to 1874?

A. No; I made sometimes 3 or 4 dozen collars, and then did other work, such as is used in harness shops.

Q. When did you make collar-pads like you have described, in Grand Rapids?

A. From '51 to '67 or '68, I quit the business.

Q. Did you use a metal plate on your pads?

A. No, sir.

Q. Did you ever make any pads like Defendant's "Exhibit 7"?

A. Yes, sir.

Q. Where and when?

A. In the years I have worked in the business here in Grand Rapids; I know I made some in Detroit; I have made lots of them.

Q. Do you mean from 1851 to 1868?

(Objected to, leading.)

A. Yes, sir.

Q. When did you first see straps used on collar-pads like "Exhibit 7"?

A. In Detroit in '46.

Q. When did you first see straps, such as are on Defendant's "Exhibit 5"?

186 A. I can't say exactly when I saw them; I saw them in my business.

Q. About how long ago?

A. Maybe it was in the year 1848 or 1849.

On cross-examination witness says:

Q. The pad that you made, resembling Complainant's "Exhibit D," was made of a single piece of leather, was it not?

A. Yes, sir.

Q. Explain particularly the process you used in forming the pad from a flat piece of leather into the curved shape in which it was used as a collar-pad?

A. Cut a piece of leather out, shaved the edges around, put the shaved ends into hot water, then work them around by hand or any kind of tools.

Q. Are you personally acquainted with Mr. Voss, the defendant in this suit?

A. Yes.

Q. He is a countryman of yours?

A. Yes.

FREDERIC W. TUSCH.

Read over to witness, and by him subscribed in my presence, this 18th day of January, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

Defendant's counsel now offers in evidence a certified copy of letters patent of the United States, granted to James F. Walsh, on the 4th day of October, 1870, for an improvement in caps for horse col-

lars, numbered 108,071, and also a reissue of the patent last named, which was granted to George Lang on the 18th day of November, A. D. 1877, and numbered 7951.

187 (To the introduction of which complainant's counsel objects, as immaterial and irrelevant, because both of them appear to have been issued later than the complainant's patent.)

The same are now received and marked, respectively, "Exhibit 8" and "Exhibit 9," Defendant's Proofs.

Defendant now offers in evidence a certified copy, now in the office of the clerk of the court in which this cause is pending, of letters patent numbered 192,325, granted to William Dippert on the 26th day of June, 1877, for horse collar-pads, the specifications of which patent are set forth in the Patent Office publication of June, 1877, on pages 866 and 867, and the drawing on page 262 of the drawings in the same volume.

(To the introduction of which in evidence complainant's counsel objects, as immaterial and irrelevant, because the said letters patent appear to be dated latter than complainant's patent.)

The same is now received.

WILLABALD VOSS recalled, and examined by Mr. FLETCHER, says

Q. Look at the pad now shown you, and say whether that is a pad which was sold to you as being one manufactured by William Deppert under his patent just offered in evidence.

A. Yes; it is.

The pad referred to in the last question is now offered in evidence by defendant's counsel, and the same is received and marked Exhibit "10," Defendant's Proof.

WILLIBALD VOSS.

Read over to witness, and by him subscribed in my presence, this 18th day of January, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

188 Further examination of witnesses adjourned until Monday, January 20, A. D. 1879, at ten o'clock a. m.

MONDAY, *January* 20, A. D. 1879—at 10 o'clock a. m.

Examination resumed.

JOHN J. CROWLEY, a witness produced, sworn, and examined on the part and behalf of the defendant, being duly sworn, testifies as follows:

My name is John J. Crowley. My age is thirty-four years *years.* I reside at Akley, Hardin county, Iowa. I am engaged in the manufacture of collars and harnesses.

Q. How long have you been in the business of collar and harness making?

A. About sixteen years.

Q. Did you ever live in this city?

A. Yes, sir.

Q. Do you know the complainant, Charles J. Fisher, and the defendant, Voss?

A. I am not personally acquainted with Mr. Fisher. I have known Mr. Voss for—I don't know—about fifteen years.

Mr. FLETCHER: He hasn't been in this country that long.

WITNESS: Well, I don't know; about twelve years.

Q. Did you ever work at harness making in this city?

A. I did.

Q. For whom and when?

A. For Frank Mattison; well, in '64, '65, & '66.

Q. While you were working for him did you ever make any caps or pads to go over a horse's neck and under the collar?

A. I did.

189 Q. I wish you would examine "Exhibit A," Complainant's Proof, now shown you, and say whether "Exhibit B," Complainant's Proofs, now shown you, is manufactured in accordance with the specification and drawing of "Exhibit A," and give your reasons for your opinion.

A. I shouldn't consider that this pad was made in accordance with the specifications. The specifications state that the pad is to be stuffed. I shouldn't consider that this pad is stuffed.

Q. Are there any other points that you think of?

A. Well, I should judge from the drawings that it isn't the same shape as "Exhibit B." I should judge that the drawings show it straight on top.

Q. I wish you would look at this lot of exhibits and select from them any pad or pads which are, in your opinion, manufactured in accordance with the drawings and specifications of "Exhibit A."

(All the complainant's and defendant's exhibits now shown witness.)

A. I don't see any pad that is just exactly like the specifications. I should consider "Exhibit 4" Defendant's Proof, the nearest.

Q. Well, are there any others substantially like it?

A. I should consider "Exhibit 5," Defendant's Proof, was.

Q. I wish to call your attention to "Exhibit 6," Defendant's Proof, and ask whether that pad is made at all like the specifications of "Exhibit A," Complainant's Proof?

A. Well, I should consider it was, somewhat.

Q. In your opinion, would a practical harness-maker, who was given those specifications ("Exhibit A," Complainant's Proofs) and directed to make a pad from its specifications and drawings, produce such a pad as "Exhibit B"?

A. In my opinion a practical collar-maker would not.

190 Q. In your opinion, would he produce such a pad as Exhibit C?

A. He would not.

Q. I wish you would give any reason why he would not produce such a pad as "Exhibit C."

A. The specifications call for a stuffed pad; this ("Exhibit C") is not a stuffed pad.

Q. Would he produce such a pad as "Exhibit D"?

A. He would not.

Q. Did you, at any time prior to May, 1867, see collar-pads made with their front and rear edges turned up?

A. I did; I made them myself.

Q. Whereabouts?

A. In Frank Mattison's shop.

Q. Whereabouts was Frank Mattison's shop; in what city, I mean?

A. In Grand Rapids, Michigan.

Q. About in what years did you make them?

A. In '64, '65, and '66.

Q. What means did you take the pads retain their turned-up shape?

A. I put them on the collar, and then put the collar on the collar block; then turned up the edges with the collar mallet; then rubbed them with a bone, so as to make a perfectly smooth surface.

Q. Did you work the leather when it was wet or when it was dry?

A. I wet the leather, and worked it while it was wet.

Q. What is the process called which you have just described?

A. I should call it crimping.

Q. I wish you would look at "Exhibit 7," Defendant's Proofs, and see what special means has been used to make that pad retain its shape.

A. It is the oblong slot cut in the centre; it would have a
191 tendency to make it keep its shape, having a slot cut in it and then sewed up.

Q. When and where did you first see that device used to make collar-pads retain their turned-up shape?

A. I never saw one like that before.

Q. Did you ever see pads stuffed and quilted prior to 1867?

A. I did.

Q. When and where?

A. I saw them at Mattison's and several shops.

Q. About what year?

A. About '64, '65, & '66.

Q. What Mattison do you mean?

A. Frank Mattison, of Grand Rapids, Michigan.

Q. How did they compare, in general form and appearance, with Defendant's "Exhibit 5"?

A. They were a similar pad.

Q. Was the under side of the pad made of cloth or leather?

A. Both cloth and leather.

Q. I don't understand whether cloth and leather were both used on the same pad, or sometimes one and sometimes the other; please state.

A. I have seen the cloth lining with the leather back, and also the leather lining and leather back.

Q. When did you first see straps, such as are on "Exhibit 5," used on collar-pads; I mean the straps which go around the end of the collar?

A. Well, as long as I can remember; I don't remember of ever seeing a collar-pad without those straps on a short straw collar.

Q. Did you ever see collar-pads like the one now shown you prior to 1867; and, if so, when and where?

192 A. I have seen similar pads to this one, maybe not just exactly like this one, in Grand Rapids in '64 & '65.

Q. In whose shop?

A. In Frank Mattison's.

Q. Were the pads which you have spoken of as having been made in Frank Mattison's shop sold from that shop to be used by the persons to whom they were sold; were they kept there for sale?

Objected to; leading.

A. They were.

The pad last shown witness offered in evidence by defendant's counsel, and the same is received and marked "Exhibit 11," Defendant's Proof.

Q. Would a practical harness-maker, who was given "Exhibit A" from which to make a collar-pad, produce about such a pad as "Exhibit 11," or would he not?

A. I should judge that he would produce about such a pad, with the exception of the straps. The specifications or drawings call for buckles.

Q. What material is the inside lining of "Exhibit 11"?

A. I should think it was sheep-skin.

Q. If the inner lining was made of heavier and finer leather than sheep-skin, could the pad be made more free from wrinkles than it now is?

A. It could, by using heavy leather. The pad can be made perfectly smooth, free from wrinkles on the under side.

On cross-examination witness says:

Q. Do you know when "Exhibit 11" was made?

A. I suppose it was made to-day.

Q. Do you know where it was made?

193 A. I suppose it was made to Mr. Voss.

Q. Why?

A. Well, I heard him tell Mr. Klaiber to go down and make such a pad as we made years ago.

Q. In what respect does this differ from what you made years ago?

A. It hasn't got the buckles on the straps. Some of them had buckles on the straps.

Q. Is that the only difference?

A. Some of the pads were made with cloth; some would vary a little in shape.

Q. In what year did you first become acquainted with Mr. Voss?

A. In 1865 or '6, I think.
Q. What time of year?
A. I can't answer that question.
Q. What was he doing then?
A. He was working at harness-making.
Q. For whom?
A. Frank Matteson.
Q. Do you know how long he had been at work for Frank Matteson at that time?
A. I was working at Frank Mattesons when Mr. Voss came to work for him.
Q. How long did you and Mr. Voss work for Frank Matteson?
A. I worked for Frank Matteson about three (3) years; I couldn't say how long Mr. Voss worked for him; he was there when I left—at Mr. Matteson's.
Q. In what year did you leave, and how long was it after Mr. Voss came there?
A. I left in 1866. I think about a year after Mr. Voss came. I should judge about a year.
194 Q. From the drawings attached to "Exhibit A," would you judge that the pad described in Mr. Fisher's specification was substantially the same, aside from the buckles on the straps, as Defendant's "Exhibit 11"?
A. I should judge it was similar.
Q. Isn't it precisely the same, as far as you can see, from an examination of the specifications and drawings, aside from the straps and buckles?
A. I should judge that the pad represented in the drawings wasn't quilted; I don't think it's got those tufts in—quilted.
Q. Is that the only difference you would make?
A. I should think that was the only difference.

Further examination adjourned to 2 p. m.

2 P. M., JANUARY 20TH, 1879.

Examination resumed.

Q. In your testimony this forenoon you stated that "Exhibit 7" was made to assume its present shape by cutting out an oblong slot and then sewing it together; do you mean to say that such process will cause it to assume its present shape?
A. Not entirely so, no; it has a tendency to keep it in shape.
Q. Did you ever see a slot that was not an oblong slot?
A. I don't know as I have.
Q. What do you mean by the term slot?
A. If it was round I would call it a hole; anything long I would call a slot.
Q. Suppose it was a square, or three sided, then what would you call it?
A. If it was square I should call it a square hole, if it was three sided I should call it a three-square hole.
Q. Does the cutting out of the oblong slot from a plain piece of

leather, and the sewing up the hole cause the leather to assume a shape any where near like the form of "Exhibit 7"?

195 A. Well, no, it would not; but it has a tendency to keep it in that shape.

Q. How long have you resided at your present place of residence?

A. About eleven months.

Q. Where did you reside immediately preceeding the eleven months?

A. At Greenville, in this State.

Q. How long did you reside at Greenville?

A. I went to Greenville after I left Mattison's; well, I think in 1867—'66 or '67.

Q. Which do you think it was; in '66 or '67?

A. I think it was in '67.

Q. Why do you think it was in 1867?

A. Mr. Voss, he called my attention to the fact after we left here, and I think I made a mistake in the dates.

Q. Is that the only reason that you have for thinking that it was in 1867 that you left Mattison's?

A. In 1865 I enlisted; went down South for about seven months, and came back to Mr. Mattison's to work, and I think I stayed there over a year.

Q. What time in 1865 did you enlist?

A. March 16.

Q. Where did you enlist?

A. Lockport, New York.

Q. In what company?

A. In Company E, 47th New York State Veteran Volunteers, 2nd brigade, 2nd division, 10th army corps.

Q. Who was the captain of the company in which you enlisted?

A. Captain Smith.

Q. Do you know what his first name was?

A. I do not; I think it was E. J. Smith; I am not positive?

196 Q. When and where was you mustered out of service?

A. I can't tell you the date; we was paid off at Hart's Island, New York.

On redirect examination witness says:

Q. Is there any correction you wish to make in your testimony as to when you became acquainted with Mr. Voss—as your testimony shows, as I understand it, that you became acquainted with him in 1866?

A. Yes; I am satisfied that it was in 1867; it was after I came back from the army.

Q. About how long did you work for Mr. Mattison in all?

A. About three years.

Q. Did you work for him before you enlisted?

A. I did.

Q. And after you were mustered out?

A. Yes.

Q. Do you mean to say that it was three years from the time you

first worked for him until you last worked for him, or that you put in three years of work for him?

A. Three years in all, at different times; I worked for him three years; not three consecutive years.

On recross-examination witness says:

Q. How long after your return from the army was it that you commenced to work for Mr. Mattison?

A. I think about three months.

Q. How long after you commenced to work for Mr. Mattison was it that you became acquainted with Mr. Voss?

A. I should think it was a year anyway; I think it was about a year.

Q. Might it not have been two (2) years?

A. I don't think it was; no.

On redirect examination witness says:

197 Q. Do you mean a year from the first time or second time you commenced to work for Mattison?

A. The second time.

JOHN J. CROWLEY.

Read over to witness and by him subscribed in my presence, this 20th day of January, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

SEBASTIAN KLAIBER, a witness produced and examined on the part and behalf of the defendant, being duly sworn, says:

My name is Sebastian Klaiber; my age is fifty-three years; I reside in Grand Rapids; I am a grace by occupation.

Q. Where were you born?

A. In Germany.

Q. When did you come to America?

A. In 1852.

Q. When did you come to the city of Grand Rapids?

A. In 1854, in the month of April.

Q. Were you ever a harness and collar-maker?

A. Yes, sir.

Q. Where and how long did you work at that trade?

A. Altogether, here and in the old country?

Mr. FLETCHER: Yes sir.

WITNESS: I worked about 10 years in the old country, two years in Ohio, and fifteen years in the city of Grand Rapids.

Q. During the time that you were working in that business did you see any caps or pads made for protecting a horse's neck from a collar?

A. I did, sir; made a good many myself.

(Witness is shown Exhibit D.)

Q. Did you ever at any time see any pads made like that, leaving off the plate?

A. I did, sir.

198 Q. When, and where?

A. The first ones I seen in Ohio, but we turned the flesh side in, in Ohio, and cramped it up.

Q. Did you say cramped or crimped?

A. Just like that (referring to exhibit).

Q. Did you see any made at any other place than in Ohio; if so, where, and when?

A. Yes, sir; here in Grand Rapids.

Q. When?

A. In Ohio, in '53; in Grand Rapids after I came here; I came here in 1854, and I have seen them, and made them myself, up to the time I quit harness making; I quit harness making in 1869, in the month of November.

Complainant's counsel objects to all the testimony which relates to pads seen in Ohio, as not competent under the answer in the cause.

Q. Did you see any pads in Grand Rapids with their front and back edges turned up like the edges of "Exhibit D," before the year 1866; and, if so, how long before 1866?

A. Yes, sir; I did; soon after I came here I saw them that way, and made them myself; I never put on any others than these to short straw collars.

Q. Where did you first see straps put on collar-pads after you came to Grand Rapids?

A. Ever since I came here; I never made any others but straps on.

Q. Were the pads, which you have described as having been seen and made by you, kept for sale?

A. Yes, sir; they was put on the collar, and the collar sold.

Q. What did you do to the pads which you made, to make the front and back edges turn up like the edges of "Exhibit D"?

199 A. I shaved the edges pretty far in from the edges; I shaved the flesh side, put the thing in water, so it will get soft you know, and curled it over, and put in a shape like that "Exhibit D," exactly; and I used to take a piece of bone to smoothen it off; some leather will draw wrinkles; leather that comes off the neck for instance, and I took the piece of bone and smoothed it out.

Q. Is there any name which is given by harness-makers to wetting leather and putting it into the unnatural shape which you have described; if so, what is it?

A. I don't know of any extra name; I always called it collar-pad.

Q. What do you do to leather when you crimp it?

A. Well, leather has to be made wet, you know; some of them puts it on a block, and some does it by hand, and put the shape on that they want to put on it.

Q. Did you ever see any stuffed pads made and sold in Grand Rapids prior to 1865?

A. Yes, a great many.

Q. When were they made, and by whom were they made?

A. First ones I seen made by Kruger & Tusch.
Q. When was that?
A. That was soon after I came here, in 1854.
Q. Did you ever make any since you came to Grand Rapids?
A. Yes, sir; lots of them.
Q. When did you first make them?
A. In 1855, when I went in company with Kruger, or 1856, perhaps.

(Defendant's "Exhibit 11" shown witness.)

Q. Who made that pad?
A. That was made under my direction.
200 Q. When was it made?
A. To-day; I cut it out myself.
Q. When did you first see pads like that made and sold?
A. Just as long as I worked at my trade here in the city of Grand Rapids.
Q. What kind of leather is the inside of that pad made of?
A. I thought when I cut it it was horse-hide; I don't think it's sheep-skin.
Q. Is the inside lining of that pad made of thin light leather or thick fine leather?
A. Its real thin leather.
Q. If it was made of heavy thick leather would there be more or less wrinkles on the inside of the pad?
A. It can be made of heavy leather and there would be no wrinkles on it at all. For instanee, cut a piece out of a piece of flank harness leather, and there would be no wrinkles in it at all, ("Exhibit 5,") Defendants' Proofs, now shown witness.
Q. What substantial difference is there between this pad and "Exhibit 11"?
A. I don't know of any difference except there is buckles on here ("Exhibit 5.")
Q. ("Exhibit 7," Defendants' Proof, shown witness.) Did you ever before see a pad like that?
A. Yes, sir; I made some similar like this myself.
Q. How long ago?
A. Good many years; I made them like this myself.
Q. Say about how long ago you saw them and made them, at Grand Rapids?
A. I made them, anyhow, the time I worked for Mr. Tusch; that is, Mr. Tusch, not for Kruger & Tusch.
201 Q. When did you work for Mr. Tusch?
A. It was before the war broke out, any way, '59, I believe.
Q. How is that pad made?
A. It is made just like "Exhibit D," with the exception that it have a kind of hole, diamond-like, cut out and sewed up, if I had a thick piece of leather that came off the neck of a harness hide, I generally cut in that hole and sewed it again, and then it won't give

so many wrinkles on the inside, and it's got to stay in just such shape as this one is in now, (referring to "Exhibit 7.")

On cross-examination witness says:

Q. Is there any substantial difference in the construction of defendants' "Exhibit 3," and defendants' "Exhibit 11"?
A. There is.
Q. In what does the difference consist?
A. There is some buckles on the straps of "Exhibit 3," a hole cut through the top piece, and the lining has an extra piece sewed on on each side the lining, and "Exhibit 3" hasn't got so many tufts as "Exhibit 11" has, no strap on the top of the pad ("No. 3") where the billets of the collar goes through.
Q. You would say then, that they were constructed substantially different, would you?
A. There is some difference.
Q. Would you say, that they were substantially different?
A. They are both made about on the same principle.
Q. Is not the principle precisely the same in the two pads, aside from the straps and buckles?
A. No; not exactly the same.
Q. Please point out the difference in principle?
A. "Exhibit 3" has some pieces put on the side of the
202 lining to prevent it getting in so many wrinkles, that is all the difference that I can see.
Q. At whose request, and for what purpose was "Exhibit 11" made?
A. I was asked by Mr. Voss and Mr. Fletcher whether I ever made any such pads. I told them yes, I made it for to show what kind of pad I used to make.

On redirect examination witness says:

Q. How much time did you take in making "Exhibit 11"?
A. I guess it took some over an hour.

SEBASTIAN KLAIBER.

Read over to witness and by him subscribed in my presence, this 20th day of January, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

The above testimony of the defendant taken by consent of both parties. It is agreed between the parties that the complainant shall have the same time to put in his rebutting testimony after this date that he has by rule after the expiration of the defendant's time.
January 20, 1879.

CHARLES A. RENWICK,
Special Examiner.

203 UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

I, Charles A. Renwick, the special examiner heretofore appointed in this suit, do hereby certify that the foregoing are the proofs taken, and the depositions of Willabald Voss, Frederick W. Yusch, Willabald Voss (recalled), John J. Crowley, and Sebastian Klaiber, witnesses produced before me in behalf of said defendant, and taken, commencing on the 18th day of January, A. D. 1879, at 10 o'clock a. m.; that said witnesses were first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to said suit; that the examination of said witnesses was reduced to writing by me, and by me read over to said witnesses, and by said witnesses subscribed in my presence; that said defendant attended said examination by Niram A. Fletcher, one of his solicitors, and said complainant attended said examination by Edward Taggart, one of his solicitors.

Witness my hand, this 2nd day of July, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

204 Fees:

4 oaths	1 00
104 folios	20 80
3 adjournments	1 50
3 exhibits	2 00
	$25 30

THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Southern Division, }

I, Henry M. Hinsdill, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the files and records and the whole thereof in the proceedings of said court in said entitled cause.

Witness my official signature and the seal of said court, at Grand Rapids, this 17th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] HENRY M. HINSDILL, *Clerk.*

Endorsed on cover: W Michigan C. C. U. S. No. 161. Willibald Voss, appellant, *vs.* Charles J. Fisher. Filed 15th November, 1881.

NOV 26 1884
JAMES H. MCKENNEY
113-273

Supreme Court of the United States

OCTOBER TERM, 1884.

No. 1085

WILLIBALD VOSS, APPELLANT,

vs.

CHARLES J. FISHER

ARGUMENT FOR APPELLANT.

E. A. WEST,
L. L. BOND,
Counsel for Appellant.

203 UNITED STATES OF AMERICA, } ss:
Western District of Michigan, }

In the Circuit Court of the United States for the Sixth Circuit and Western District of Michigan. In Equity.

CHARLES J. FISHER, Complainant,
vs.
WILLIBALD VOSS, Defendant.

I, Charles A. Renwick, the special examiner heretofore appointed in this suit, do hereby certify that the foregoing are the proofs taken, and the depositions of Willabald Voss, Frederick W. Yusch, Willabald Voss (recalled), John J. Crowley, and Sebastian Klaiber, witnesses produced before me in behalf of said defendant, and taken, commencing on the 18th day of January, A. D. 1879, at 10 o'clock a. m.; that said witnesses were first duly sworn by me to testify the truth, the whole truth, and nothing but the truth in relation to said suit; that the examination of said witnesses was reduced to writing by me, and by me read over to said witnesses, and by said witnesses subscribed in my presence; that said defendant attended said examination by Niram A. Fletcher, one of his solicitors, and said complainant attended said examination by Edward Taggart, one of his solicitors.

Witness my hand, this 2nd day of July, A. D. 1879.

CHARLES A. RENWICK,
Special Examiner.

204 Fees:

4 oaths	1 00
104 folios	20 80
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THE UNITED STATES OF AMERICA, } ss:
Western District of Michigan, Southern Division, }

I, Henry M. Hinsdill, clerk of the circuit court of the United States for the sixth circuit and western district of Michigan, do hereby certify that the foregoing is a true and compared copy of the files and records and the whole thereof in the proceedings of said court in said entitled cause.

Witness my official signature and the seal of said court, at Grand Rapids, this 17th day of May, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] HENRY M. HINSDILL, *Clerk.*

Endorsed on cover: W Michigan C. C. U. S. No. 161. Willibald Voss, appellant, *vs.* Charles J. Fisher. Filed 15th November, 1881.

Office Supreme Court U. S.
FILED
NOV 26 1884
JAMES H. McKENNEY,
CLERK.

113-23

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 161.

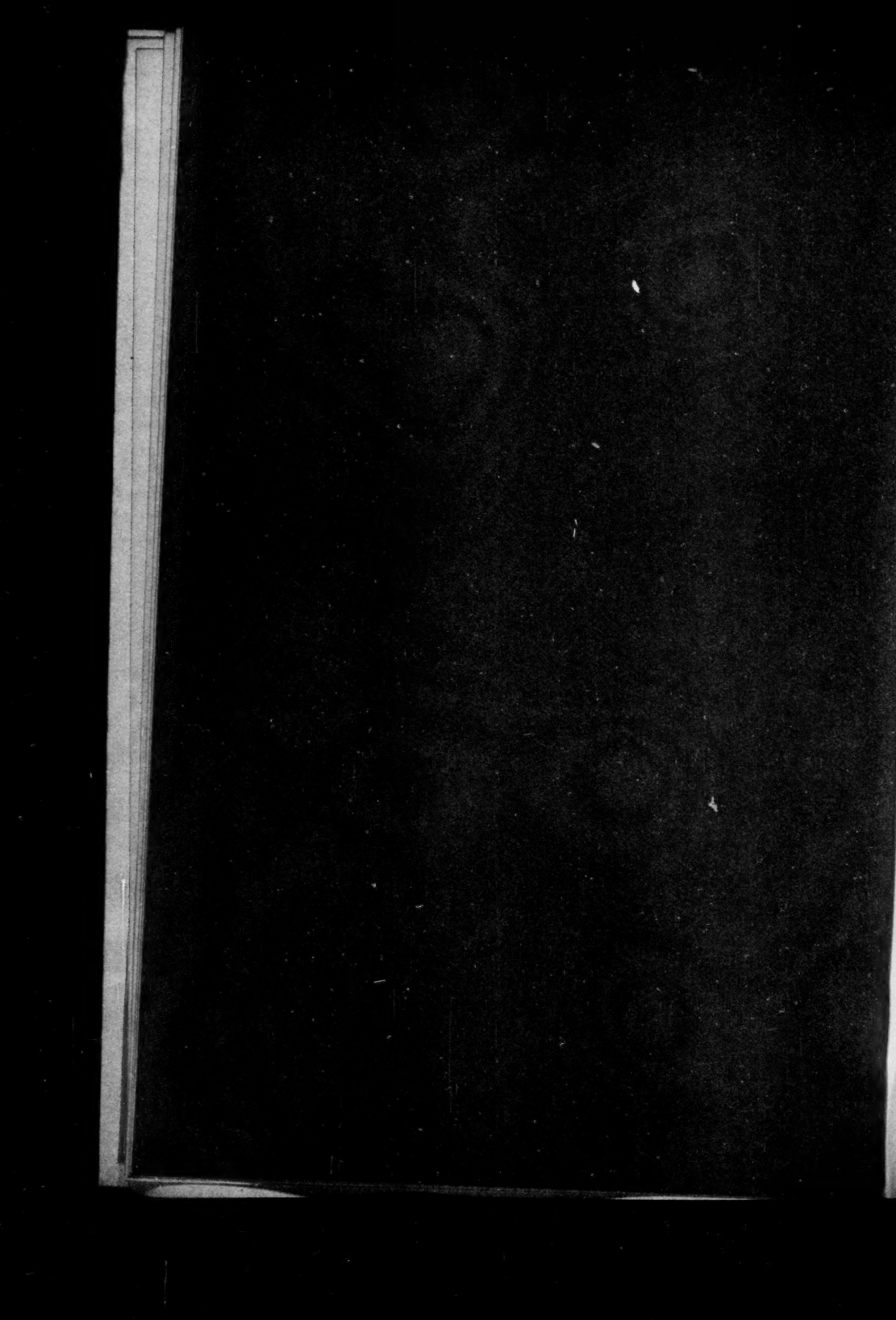
WILLIBALD VOSS, APPELLANT,

VS.

CHARLES J. FISHER.

ARGUMENT FOR APPELLANT.

E. A. WEST,
L. L. BOND,
Counsel for Appellant.



United States Supreme Court.

IN EQUITY.

OCTOBER TERM, 1884.

WILLIBALD VOSS, *Appellant*,
vs.
CHAS. J. FISHER. } No. 161.

STATEMENT OF THE CASE.

The suit was brought for the infringement of Patent No. 86,-646, dated May 4, 1869, granted to said Fisher, for an Improvement in Neck Pads for Horses.

The answer denies infringement; avers that Fisher was not the first inventor of the improvement, and gives names and residences of several parties who had prior knowledge thereof: and avers that substantially the same thing had been in public use more than two years before Fisher applied for a patent. It was urged below, that the patent is invalid, not involving invention, in view of the testimony, and that the claim is for a mere aggregation.

After argument, the Court below found and decreed that the patent is valid, and that defendant below, had infringed. Damages were assessed at fifty-four dollars and seventeen cents, and costs taxed at $104.34. The defendant below, appealed.

ASSIGNMENT OF ERRORS.

1. The Court erred in finding the said patent valid.

2. In finding that the defendant, Voss, had infringed the said patent.

3. The Court erred in adjudging that deferdant below pay damages and costs.

UNITED STATES SUPREME COURT.

OCTOBER TERM, 1884.

WILLIBALD VOSS,
Appellant.
vs.
CHARLES J. FISHER.

In Equity.
No. 161.

ARGUMENT FOR APPELLANT.

This suit was brought by the said Fisher for the alleged infringement of a patent granted to him, No. 89,646, dated May 4, 1869, for an Improved Neck Pad for Horses. The defenses relied upon are:

1. That the defendant below has not infringed.
2. That the alleged improvement was not patentable.
3. That the patent is for a mere aggregation of elements.

State of the Art.

The neck-pad of the patent is designed to be attached to a horse collar at its upper end, and to rest upon the neck of the horse to prevent galling.

Neck pads of various kinds were made and used prior to the complainant's supposed invention; among which were pads consisting of an outer or upper piece of leather and an inner lining of cloth or other material, leaving a cavity between the upper piece and the lining, stuffed with hair, hay, moss or other material. Such neck pads were provided with straps to secure them to the collar.

A single piece of leather had also been used for the same purpose, having two edges turned up and crimped, either by hand or in a press; and this piece of leather was also provided with straps to secure it in place. This single piece of leather, strictly speaking, is a cap and not a pad, though used in the place of a pad.

As to the use of stuffed pads, and single crimped pieces of leather, see Record, Folios 134, 139, 178, 185, 190, 198, 200. Stevens, Folio 139, says that in 1862 he made collar pads from a single piece of leather, either harness leather or sole leather, crimped, both by hand and in dies, which were like the Voss pad in controversy, with the exception of the metal plate. Similar pads were made by Walsh prior to 1856, (Folio 145). In 1868, Walsh also made pads consisting of two pieces of leather, between which was stitched a metal plate, (Folio 148), and for this form of pad he afterwards obtained a patent which is in evidence, (p. 79). Fisher, in his testimony, (Folio 80), ad-

mits that stuffed pads were old, and that a single piece of leather for the same purpose was also old.

We thus find that two classes of pads or devices for preventing galling and adapted to be secured to a collar by straps, were in common use prior to 1869, the first class being a stuffed pad; the second, a single piece of crimped leather. The Fisher pad belongs to the first class. It is a stuffed pad. The patent describes a stuffed pad; the duplicate model from the Patent Office is a stuffed pad.

The most that can be said of Fisher's improvement, is, that he provided the common stuffed pad with a lining of crimped leather to prevent wrinkles, which were liable to form in the lining of an ordinary stuffed pad.

Exhibit B, the pad offered in evidence by Fisher to illustrate his patented device, is not a stuffed pad, as appears by inspection, and from testimony which is uncontradicted. It is a solid pad, made doubtless from pieces of leather pasted and pressed together. Defendant's Exhibit No. 2, is a pad the same as complainant's Exhibit B, it having been cut open that its interior construction might be seen. The lining in this Exhibit B is of sheep skin, and it is in evidence that it would be impossible to crimp it so that it would maintain its place in a stuffed pad. (Folio 152).

It is in evidence by several witnesses that a person familiar with the art would not from Fisher's patent make collar pads similar to Voss's, but would make a stuffed pad.

INFRINGEMENT.

Two pads, Exhibits C. D, are in evidence as samples of those sold by Voss, but they are subtantially alike.

We must first ascertain exactly what is covered by the patent. The claim is as follows:

"A neck pad having an inner lining of crimped leather, and provided with straps *b*, *c*, to allow its being fastened to the collar, as herein shown and described, for the purpose specified."

The words "as herein shown and described" take us to the body of the specification and drawings to understand the scope of the claim, and we find that the following elements and conditions are essential to Fisher's pad:

1. An outer or upper piece forming the top of the pad.

2. An inner lining which must be made of crimped leather. These two pieces must be so located relatively to each other, and so united, as to leave a cavity between them.

3. A stuffing of suitable material placed in such cavity.

4. Straps *b*, *c*.

The completed pad is a stuffed pad exactly like the stuffed pads in use prior to 1869, except that it has a crimped leather lining, instead of some other lining. This is a narrow point on which to base a patent; and if the patent be valid it must be closely limited to a pad made as shown and described.

The claim does not, by its terms, make the upper piece of the pad and the stuffing elements; but it has the words "the collar pad * * * as shown and described;" and the case of *Fay vs. Cordesman*, 109 U. S., 488, is authority for making the upper piece and the stuffing, elements of the claim, because

they are essential parts of the Fisher pad, without which there would be nothing except the old single piece or cap.

The appellant's pad consists of a single piece of crimped leather, provided with straps, and having a piece of sheet metal, riveted to the leather, and so shaped as to fit the same, to aid in holding the leather in place and preserve its crimped form. It is exactly like the old crimped leather cap or pad, with a stiffening plate added, which plate performs a useful function not performed by any element of the Fisher pad.

The elements of the Voss pad are:

1. A piece of crimped leather.
2. A thin metal plate fitted and secured thereto.
3. Straps.

It has no upper piece like Fisher's; it has no lining; it has no cavity between the two pieces; it has no stuffing.

Fisher improved the stuffed pad, by providing it with a crimped lining. The Voss pad is an improvement on the single piece of crimped leather, the improvement consisting in providing the crimped leather with a stiffening piece of metal. These two pads are radically different. The parts of which they are composed are not the same, nor can equivalents for the parts of the Fisher pad be found in the Voss pad. The desired results are not reached in the same manner.

To find the elements of the Fisher pad in the Voss pad, the metal plate, in the latter, must be both the upper piece of Fisher's pad and also the stuffing, and Fisher in his testimony was forced to take this position to find that the Voss pad infringes his patent. Folio 86.

The Voss pad is made substantially in accordance with Letters Patent granted to Walsh, October 4, 1870, reissued

November 13, 1877, and the Patent Office has adjudged that this device is substantially different from Fisher's.

Stevens, a practical harness maker and familiar with patents, testified that in his opinion the Voss pads do not contain the Fisher invention, (folio 136). Powers, as expert, testified to same effect, (folios 154, 155, 156).

The law applicable to this question of infringement is familiar. For convenience of reference we mention a few cases. It is well settled that a claim consisting of several elements can only be infringed by the use of all the ingredients.

"The use of any two of these parts only, or of two combined with a third which is substantially *different in form*, or in the manner of its arrangement and connection with the others, is, therefore, not the thing patented. It is not the same combination if it substantially differs from it in any of its parts."

Prouty vs. Ruggles, 16 Peters, 336.

"Where the defendant in constructing his machine omits entirely one of the ingredients of the plaintiff's combination without substituting any other, he does not infringe, and if he substitutes another in the place of the one omitted, which is new or which performs a substantially different function, or if it is old, but was not known at the date of the plaintiff's invention as a proper substitute for the omitted ingredient, then he does not iufringe."

Gould vs. Rees, 15 Wall., 187.

"The argument used to show infringement assumes that every combination of devices in a machine which is used to produce the same effect, is necessarily an equivalent for any other combination used for the same purpose. This is a flagrant abuse of the term equivalent."

Burr vs. Duryee, 1 Wall., 573.

See also *Brooks et al., vs. Fiske*, 15 Wall., 222.

Railway Co. vs. Sayles, 7 Otto, 554.

Fisher's Patent Invalid.

The reasoning now used to make the Voss pad an infringement of the Fisher patent, shows the patent to be invalid, because there is less difference between Fisher's pad and the older Art, than between the Voss pad and the Fisher pad. Stuffed pads were old; a single piece of crimped leather, used as a pad, was old. If strengthening and stiffening the single piece of crimped leather, by means of a properly shaped thin piece of metal secured thereto was a mere suggestion from the Fisher pad, it certainly did not require invention to make a stuffed pad having a piece of crimped leather for the purpose of providing a smooth under surface. It was common to crimp leather collar caps or pads for the purpose of giving them permanently, the desired form, and the substitution in a stuffed pad of such piece of crimped leather as a lining, instead of some other lining, was mere matter of selection.

Fisher's Patent is for an Aggregation.

The several elements of the Fisher pad do not co-operate together to produce a new result due to the combination. The Fisher pad has three straps, one, *b*, on each side, and one, *c*, on the top. These straps perform the same function that they do in any other pad. The crimped lining and the straps do not in any way modify the action and function of each other. The straps are an essential element of the claim. Pads might be made exactly like Fisher's, omitting the straps, without infringement. It did not require invention to combine the straps with Fisher's pad. The patent says "My invention consists in pro-

ducing a pad which may be attached to the collar and it is perfectly smooth on the underside." The pad is attached to the collar by means of the straps *b*, *b*, *c*, and the smooth under surface is secured by crimping.

From the statement last above quoted from the patent, the inference would be that the straps for attaching the pad to the collar were new, and that the crimped lining was new, but it appears from the testimony that the straps were old, and that crimping a piece of leather to place upon the neck of a horse in connection with a collar, was also old. None of the separate elements of the patent being described or claimed as new, each element must be considered as having been old, and to sustain the patent against the objection that it is an aggregation, it must be found that the several elements, as combined, co-operate in some way to produce a new result, due to the new combination. The straps certainly have no effect in connection with a crimped lining different from the effect with some other lining.

E. A. WEST,
L. L. BOND,
Counsel for Appellant.

E. A. West
Counsel for Appellant

FILED
DEC 6 1884
JAMES H. McKENNEY
CLERK

113-213

APPELLEE'S BRIEF.

Supreme Court of the United States.

OCTOBER TERM, 1884.

No. 161.

WILLIBALD VOSS,
Appellant,
vs.
CHARLES J. FISHER,
Appellee.

EDWARD TAGGART,
Solicitor for Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

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E. A. WEST,
L. L. BOND,
Counsel for Appellant.

E. A. West
Counsel for Appellant

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DEC 6 1884
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113-213

APPELLEE'S BRIEF.

Supreme Court of the United States.

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No. 161.

WILLIBALD VOSS,
Appellant,
vs.
CHARLES J. FISHER,
Appellee.

EDWARD TAGGART,
Solicitor for Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MICHIGAN.

Supreme Court of the United States.

WILLIBALD VOSS,
Appellant,
vs.
CHARLES J. FISHER,
Appellee.

APPELLEE'S BRIEF.

I.

This suit is brought for infringement of patent No. 89,646, issued to appellee May 4th, 1869, for an "Improved Neck Pad for Horses," and to enjoin appellant from making or selling, and for an account of profits.

II.

The only legal question involved in this suit is the construction of the specification and claim of the appellee's letters patent, and that question is whether the claim will cover a collar pad having its inner surface made of a piece of crimped leather, and supported by any suitable material to give a stiffness sufficient to hold its place on the neck of the horse, the object being, as stated in the specification, to preserve a smooth inner lining and prevent wrinkles and protuberances.

III.

The facts, as admitted by the parties and shown by the testimony, are as follows:

1. The appellee invented his pad in 1867, and made his application within the proper time, and obtained his patent.

2. That from the time of the taking out of letters patent, appellee has continued to manufacture his pad, down to the present time.

3. The appellant admits that he has made pads like exhibit D and has sold pads like exhibit C without license from Fisher.

4. It seems that prior to the invention by Mr. Fisher, collar makers had been accustomed to use a piece of leather beneath the collar to protect the neck of the horse. This was usually wet and attached to the collar, and its ends were then turned up by hand, or by the use of a hammer handle or some other hard, smooth implement.

There is some testimony tending to show that prior to the invention by Mr. Fisher, single pieces of leather had been pressed in a form or die and attached to the collar by means of straps; and this device is especially depended on as a defense to this suit. The witnesses who claim to have made pads of a single piece of leather are *Charles H. Stevens* (62): *James Walsh*, (69), who says such pads would not keep their shape, and thinks he has made pads with a piece of metal sewed in, ever since 1868, but does not claim he used a crimped lining with the metal: he has no memorandum to refresh his recollection, and only makes an estimate as to dates, etc.: *Defendant Voss*, who claims to have made pads out of a single piece of leather in Germany, in 1855, (86): *Frederick Tusch*, who says he made such pads in 1851, and so on till 1867 or 1868, (91): *John Crowley*, who saw such pads before 1867, (94): and *Sebastian Klaiber*, who saw pads like exhibit 11, in Ohio in 1853, (99), but who thinks there is no difference between exhibits 5 and 11, (100).

It will be observed that none of the pads referred to by appellant's witnesses have been produced in evidence, except samples made for the occasion since the commencement of this suit, and, notwithstanding this testimony, we think that the piece of leather, wet and formed up in the collar, by hand or with some hard substance, was the nearest approach ever made to a crimped pad prior to the Fisher patent. All these pads described by appellant's witnesses were made of thin leather, (except that Stevens says (65, 67,) he made some out of sole leather—loose pieces, soft pieces): which shows that the object of all the caps or pads

made of a single piece of leather was to get a piece of pliable leather to fit the collar; and not to make a substantial pad which of its own strength would protect the neck of the horse against the collar straps and hame buckles, as does the Fisher pad. Nothing whatever could be gained by pressing these thin and soft pieces of leather in a form; without proper stiffening they would not retain their shape, but would conform to the shape of the collar, and would be easily indented by the collar and hame straps. No dies or forms have been produced by appellant or their absence accounted for.

It clearly appears that Mr. Fisher made an invention, and that such invention was of a pad far superior to any then known. In 1869, C. J. Kruger & Co., who had had much experience in the harness and collar business, entered into a contract to manufacture the Fisher pad on a royalty, and made Mr. Fisher their foreman in such manufacture. This firm was doing a large business in Grand Rapids, Michigan, at that time, and must have carefully investigated the matter before making such a contract.

Now from the evidence, giving full credence to the testimony as to the single piece of crimped leather, what is shown to have been the state of the art at the time Mr. Fisher made his invention? A soft pad or cushion without a crimped lining had been used, and a single piece of leather had also been used, the latter in form to be applied so as to fit the collar by its pliability, and always made of thin or pliable leather. Both the stuffed pad and the single leather pad or cap were intended to have such pliability as to adjust themselves to the neck of the horse and to the collar, the crimping being merely intended to turn up the ends so as to fit the collar. This turning up of the ends had also been accomplished by cutting out the diamond-shaped piece. Mr. Voss' testimony shows that he never had any idea of any other object. He even testifies in relation to exhibit 7, that the cutting out of the piece and sewing the ends together was all that was done to the piece to cause it to assume its shape. The idea of a pad with a crimped inner lining, sufficiently stayed to hold the same in shape, independently of the collar, had never been known prior to the Fisher patent. Thus was invented an article of

commerce essentially new, and different from any pad before known or used. It was not an improvement on an old invention; it was a new pad, having an inner lining of crimped leather, and stiffened or stayed in any suitable manner so as to prevent wrinkles or protuberances. The wrinkles were prevented by crimping the inner lining, but the protuberances, which were caused by the straps and buckles of the collar and hames pressing upon the top of the cap or pad, were prevented in the Fisher invention, by making the pad thicker on top, and of such rigidity that these buckles and straps could not indent the top of the pad and cause protuberances on the bottom. This invention created a new business—that of making and selling collar pads to the trade; since, always before, the few pads made were manufacturad and used by the harness makers and sold with the harness. This is illustrated by samples shown as exhibits.

The appellee avers that his patent was intended to cover, and does cover all pads having a smooth crimped inner lining sufficiently supported or stayed to cause them to retain their shape and form, and prevent wrinkles and protuberances.

The appellant, in his answer to this claim, says:

FIRST. That the complainant is not the inventor, for the reason that the single piece of crimped leather had been used before, and cites C. J. Kruger & Co., among others who have used it. It will be noticed, however, that C. J. Kruger & Co., themselves, recognized the fact that Fisher's patent was for a pad entirely different from the single crimped piece of leather.

SECOND. The appellant says, if the patent is to be interpreted to cover the combination of the straps for attaching neck pads, then it is not new, for straps were used to attach collar pads before the invention of Fisher.

THIRD. Appellant says in his answer, that if the patent be interpreted as covering the neck pad as a whole, or as embracing anything other than the divices for attaching the pad, then it is for a device not the invention of Mr. Fisher.

The testimony has developed nothing to sustain any of the claims set up in the answer; and, from the drift of the testimony taken on the part of the appellant, we think he does not expect to defend on the matters there set up, but intends to claim that Mr. Fisher's patent is not broad enough to cover such a pad as the sole leather pad or the Voss pad; and the whole effort of the appellant in his testimony, is to show that the Fisher pad, as patented, was a *stuffed* pad,—that is, a pad stuffed with some yielding substance, making a kind of cushion,—and cannot be extended to a pad stuffed with leather or any hard or solid substance.

By a reference to the specification forming part of the Fisher patent, it will be seen that the inventor points out very clearly and concisely what he intended to cover by his patent.

First he says: "*This invention relates to a new device* for protecting the "neck of horses between the upper ends of the collar to prevent galling. "For this purpose, pieces of leather, cloth or other material have hereto- "fore been used, but without the desired success. Pads could not be "made, as their inner faces could not be kept clear from wrinkles or pro- "tuberances, which were more injurious than the omission of a protecting "device."

This statement shows that the inventor understood fully the objections to the single piece of leather and the soft pad. The single piece of leather would not hold its shape, not being of sufficient strength and rigidity to prevent the straps from causing protuberances nor to prevent it from wrinkling. The same objection existed against the soft stuffed pads then in use.

The inventor further says; "My invention consists in producing a pad "which may be attached to the collar, and which is perfectly smooth on "the under side, the leather used on the under side being crimped in or- "der to obtain the desired shape."

In the following paragraph the inventor says, referring to the pad: "*It* "*is so shaped* that it fits the horse's neck between the arms of the collar, "it being thick on top and tapering toward the ends."

This description shows that the inventor contemplated a substantial

commerce essentially new, and different from any pad before known or used. It was not an improvement on an old invention; it was a new pad, having an inner lining of crimped leather, and stiffened or stayed in any suitable manner so as to prevent wrinkles or protuberances. The wrinkles were prevented by crimping the inner lining, but the protuberances, which were caused by the straps and buckles of the collar and hames pressing upon the top of the cap or pad, were prevented in the Fisher invention, by making the pad thicker on top, and of such rigidity that these buckles and straps could not indent the top of the pad and cause protuberances on the bottom. This invention created a new business—that of making and selling collar pads to the trade; since, always before, the few pads made were manufacturad and used by the harness makers and sold with the harness. This is illustrated by samples shown as exhibits.

The appellee avers that his patent was intended to cover, and does cover all pads having a smooth crimped inner lining sufficiently supported or stayed to cause them to retain their shape and form, and prevent wrinkles and protuberances.

The appellant, in his answer to this claim, says:

FIRST. That the complainant is not the inventor, for the reason that the single piece of crimped leather had been used before, and cites C. J. Kruger & Co., among others who have used it. It will be noticed, however, that C. J. Kruger & Co., themselves, recognized the fact that Fisher's patent was for a pad entirely different from the single crimped piece of leather.

SECOND. The appellant says, if the patent is to be interpreted to cover the combination of the straps for attaching neck pads, then it is not new, for straps were used to attach collar pads before the invention of Fisher.

THIRD. Appellant says in his answer, that if the patent be interpreted as covering the neck pad as a whole, or as embracing anything other than the divices for attaching the pad, then it is for a device not the invention of Mr. Fisher.

The testimony has developed nothing to sustain any of the claims set up in the answer; and, from the drift of the testimony taken on the part of the appellant, we think he does not expect to defend on the matters there set up, but intends to claim that Mr. Fisher's patent is not broad enough to cover such a pad as the sole leather pad or the Voss pad; and the whole effort of the appellant in his testimony, is to show that the Fisher pad, as patented, was a *stuffed* pad,—that is, a pad stuffed with some yielding substance, making a kind of cushion,—and cannot be extended to a pad stuffed with leather or any hard or solid substance.

By a reference to the specification forming part of the Fisher patent, it will be seen that the inventor points out very clearly and concisely what he intended to cover by his patent.

First he says: "*This invention relates to a new device* for protecting the "neck of horses between the upper ends of the collar to prevent galling. "For this purpose, pieces of leather, cloth or other material have hereto- "fore been used, but without the desired success. Pads could not be "made, as their inner faces could not be kept clear from wrinkles or pro- "tuberances, which were more injurious than the omission of a protecting "device."

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In the following paragraph the inventor says, referring to the pad: "*It* "*is so shaped* that it fits the horse's neck between the arms of the collar, "it being thick on top and tapering toward the ends."

This description shows that the inventor contemplated a substantial

pad, stiff and solid enough to *hold its shape* and thick enough at the top to prevent the hame or collar straps from causing protuberances. This result was to be brought about by the use of a crimped inner lining of leather, supported by any substance of sufficient consistence to hold the crimped lining in place and prevent wrinkles and protuberances. Nothing of the kind had ever before been known or used, and the proofs show that from the introduction of the Fisher pad dates a new era in the pad business.

The pad as above described has no reference to a stuffing, which is, however, referred to further along in the specification. The smooth inner lining is referred to, as is also the extra thickness on top to prevent injury from straps, and the turned up ends; but nothing is said about stuffing. But further along in the specification, the inventor says: "The under side "of the pad is formed by a piece of leather which is crimped in order to "have its ends turned up without producing wrinkles; the stuffing in the "pad is of hay or any other suitable material.

This paragraph upon which appellant bases his claim that the inventor contemplated a soft pad—which claim appears to be the gist of his defense—does not seem to us to prove anything of the kind. It is well known that hay and straw have been used for a long time to stuff horse collars; and collars so stuffed are nearly as hard as solid wood, which has sometimes been used for that purpose. Perhaps this very fact, *i. e.*, that collars stuffed with hay were *solid*, suggested to the inventor the idea of hay as a stuffing for his pad. Certainly a pad made by pressure, or a form stuffed with hay is *not* a "soft pad."

The claim in appellee's patent makes no reference to any stuffing; and in no other place except the single sentence above quoted, is there anything said about it. The description shows plainly that the thickness on top and the stiffness of the pad were not produced by the ordinary soft stuffing. The statement of the nature of the invention does not refer to any stuffing, neither does the statement of the invention, as above given.

The pads made by the inventor immediately after the granting of the patent, were made stiff and substantial by means of several thicknesses of

leather; some of the pads having a very thin layer of floss, and some of them having no stuffing of any kind except leather pasted together. (See Ex. G and K made for C. J. Kruger & Co. in the early stages of the patent; also the Exhibits E X and O K of appellee's proofs, p. 15.) It appears from the testimony that in 1869, the appellee, as foreman in Kruger & Co.'s shop in Grand Rapids, Mich., made quite a number of collar pads of a smaller size than was saleable, which remained with the appellee, several of which were produced and offered in evidence. In order to ascertain the construction of these pads they were cut open and found to be constructed as above described, except as to the last two, E X and O K, which were stuffed with hay. These are very solid and rigid even more so than those made of solid leather.

Mr. Fisher, in his testimony, says (pp. 32, 33,): "The defect in the pads before mine was that they were not substantial enough to prevent the straps and bukles from hurting the horses' necks. I overcame that by adding more than one sheet of leather, by adding to the crimped piece a sufficient thickness to prevent it. The single piece of leather (35) had a tendency to have protuberances from the buckles and hame straps. When I made my application I contemplated supporting the crimped inner lining by any suitable material (35). It is necessary to have something to support the inner piece, and I think Exhibit D is substantially the same as I described in my specification (36). I sometimes overcame the difficulty with leather, sometimes with iron, and sometimes with more leather (36). I used iron stitched into the leather before I made my application (37).

In using wool or hair, only a small quantity was used, as shown in the Kruger Exhibits; and it was not used for the purpose of making a soft pad, but merely for the purpose of filling up the little crevices left by the leather filling. (See description on pp. 55 and 56 of Mr. Fisher's testimony.)

Charles H. Stevens, (66) appellant's first witness, says that in 1869, he called on Fisher in Grand Rapids, and found him manufacturing the same kind of a pad he is now making. (Like Exhibit B.) "He was manufac-

"turing them the first time exactly as he was the last time." (The last time was November, 1878, p. 66.) The whole testimony of Stevens shows just what is claimed by the appellee, *viz*: that before the Fisher invention the only pad was made of loose pieces of leather, and that Fisher made a stiff, solid pad.

Henry Marsh, one of the appellee's witnesses, says (40), "I have "been in the harness business over twenty years. In my opinion as "a harness maker, Exhibits C and D infringe on Mr. Fisher's patent." (41.) The iron takes the place of leather. The Fisher patent is crimped so as not to wrinkle, and is made thicker in the middle to protect against the strap and buckle. Exhibit E is a sample of the pads in use before the Fisher pads. (42.)

Appellee's witness, *C. J. Kruger*, a member of the firm of Kruger & Co. says (45), Kruger & Co made an arrangement to make the Fisher pad in 1869. Examines Exhibit G and says, "these are the pads we made. We used a block like Exhibit H. Exhibit I is like the soft pads we made. We never made any pads like Exhibit 1. We considered the Fisher pad a valuable pad. Its advantage consisted in its perfectly smooth inner surface and in its having thickness (46). I think Exhibits G and B are manufactured in accordance with Mr. Fisher's invention (46). I think leather a suitable material for filling. We used some leather (47).

Mr. Fisher had the charge of manufacturing pads for Kruger & Co. (49) He testifies that he made pads with no stuffing but layers of leather; and furnishes some of the pads so made, being a lot made for Kruger & Co., which are offered in evidence as Exhibits G and H.

Frank Mattison says a cap is a single piece of leather, and a pad is formed up (50). "I never saw a pad having its inner surface of a single "piece of crimped leather before I saw Fisher's pad." The stiffening in G makes it superior to 7. I should not think Exhibit 7 would keep its shape (50). "I should say the sheet iron in complainants' Exhibit D, the cast iron in Exhibit C, and the stiffened leather in Exhibits B and G, are designed to perform and do perform the same result" (51).

This witness thus recognizes the principle claimed by the inventor, *viz:*

hat the novelty consists in a pad having a crimped inner lining and supported by any substantial backing, making it a *stiff pad.*

On page 52 he says he has seen pads very much like Exhibit 6 for fifteen or twenty years. In the cross-examination he refers to a stuffed pad they made,—said it had an inner lining of sheepskin or calfskin (54).

The appellant has attempted to show that the Fisher patent does not describe such a pad as he makes, that it can only be applied to a stuffed pad, and that it is limited to a pad stuffed with some soft stuffing. Several experts were called to substantiate this theory.

Charles H. Stevens (63) says the Fisher patent calls for a pad stuffed with hay or hair, and is made with an upper and lower piece and stuffed between, and then says (64) stuffed pads have been in use ever since he can remember.

Another expert, *James Walsh*, is of the opinion that Exhibit 2 is not made like Fisher's patent. He says (69) the specification specifies two pieces of leather with a cavity or vacant space and a stuffing of hay or other suitable material, and that Exhibit 2 has no such stuffing. Again he says, (70) Exhibit 2 is turned up higher at the ends than the center. "The flaring top surface is of vast importance." Stuffed pads were in use prior to 1868.

David J. Powers, the other expert, says (72) he has examined the patent; Exhibit B is not made like the patent; the patent describes a pad stuffed with hay, etc., and a pad of that kind must have a receptacle. Exhibit B is not a stuffed pad. Says "Fisher Copy" is straight on top, and that Exhibit C is wholly unlike Fisher copy; that evidently the object of the inventor was to keep the under side of the pad free from wrinkles (74).

Appellant Voss, as an expert, comes to the same conclusion (86). He says a saddle shape has its advantages; Appellee's pad will wrinkle by wear. Says he made pads in Germany in 1855; he was battery saddler at the time he made first pads; was saddler two years; before that was a soldier; was a soldier four years; was 37 years of age July 7, 1878 (88).

John Crowley (93) thinks Exhibit B not made like patent. The

specification calls for a stuffed pad. He had seen pads of a single piece of leather and stuffed pads with straps,—as long as he could remember.

All these witnesses start out with the preconceived idea that the Fisher patent contemplated a soft pad; whereas the very purpose of the inventor, as fully stated in the specification, precludes such an idea. No soft pad was ever made by Fisher or by those to whom he had given the right to make pads; all have shown the crimped inner lining supported by a rigid backing; all have shown a pad made thicker on top to prevent galling and protuberances from the collar and hame straps; in fact every pad that has been produced by Mr. Fisher or by those who he claims are infringing shows the same principal

If Mr. Fisher had contemplated a soft stuffed pad, he would not have been making a solid leather pad in 1869, a few weeks after he obtained his patent, as testified by defendant's witness *Stevens*, (66); nor would he in his specification have referred to hay as a suitable stuffing, since it makes a pad as solid as leather itself. If he had intended a soft pad, there is no reason why he should not have said so. If his invention covered only a soft pad, Kruger & Co. would not have entered into a contract with him to manufacture and pay a royalty, as they did. The opinion of parties at the time when there was no dispute and no prejudice is better evidence than any pretended expert testimony picked up by parties interested in this suit. Kruger & Co. were a respectable firm, thoroughly acquainted with the business; and Mr. Kruger's testimony shows that he now has the same opinion he had at the time he made the contract with Mr. Fisher to manufacture his pads.

Taking the testimony of the appellee that he invented a rigid pad and manufactured a solid pad before he made the application for a patent; the testimony of Kruger that the advantage of the Fisher pad consisted in the smooth inner lining and stiff substantial support; the testimony of Marsh and Mattison that the cast iron in the sole leather pad, the sheet iron in the Voss pad, and the stiff leather in the Fisher pad all fulfilled the same purpose; with the Exhibits F and G, which are a part of the pads made for Kruger & Co. shortly after the patent issued; and the testimony of appellant's witness

Stevens that as early as 1869 he found appellee manufacturing pads in the City of Grand Rapids precisely like the pad he now manufactures (*viz.* Exhibit B),—we think the appellant's claim that Fisher invented, if anything, a *soft pad* is untenable.

Mr. Fisher invented the first pad having an inner lining of crimped leather,—that is, it was the first collar pad, hard or soft, ever made in which a single piece of crimped leather for the inner lining was supported by a backing of any kind.

The specification was sufficient to protect him in what he invented ; and for that purpose, should, if necessity require, be construed liberally and favorably to the inventor.

We deem the following cases pertinent to the questions involved in this suit.

Blanchard v. Beers, 2 Blatch., 411, defines the proper tests for determining the identity of one machine with another, on the question of infringement (See pp. 416 and 418). The judge, in charging the jury, says: "It is material at this stage of the case to recall your attention to "a principle already stated, namely, that whether or not the one machine "is an infringement of the other does not necessarily depend upon whether "their mechanical structures are different. But the question is whether "(whatever may be the mechanical construction) the latter machine con-"tains the means or combination found in the previous machine,—wheth-"er, taking the structure as you find it, you see the new idea embodied "in it."

In *Tracy v. Tracy*, 2 Blatch., 278, (patent on a cultivator) the patentee claimed "The arrangement of the teeth in two rows, in combination with "a pair of wheels, the treads of which are in a line midway between the "points of the two rows of teeth, substantially as described."

The defendant threw the axle forward and the hind teeth backward so far that the tread of the wheels was not midway between the points of the two rows of teeth, and by thus increasing the leverage behind reduced the strain on the horses still more. He also moved forward the middle tooth

of the forward three and the two middle teeth of the four behind, so that the two rows were no longer straight.

The court held there was an infringement.

In *Root vs. Ball et al*, 4 McLean, 180, the court says, referring to the defendants, " If they adopt the same principle, they are guilty."

In *Winans v. Denmead*, 15 How. 330, the question of change of form is fully discussed. The patent was for a car body in the form of a cone; it described no other form. The defendants used a car body octagonal in form. Yet the court held, nothwithstanding the patent claimed a particular geometrical form, that the defendants were infringers. On page 341 the court says: "While it is true that the patentee may so restrict his "claim as to cover less than what he invented, or may limit it to one form "of machines, excluding all other forms, though they embody his inven- "tion; yet such an interpretation should not be put upon his claim if it "can fairly be construed otherwise,—and that for two reasons:

"1. Because the reasonable presumption is that, having a just right "to cover and protect his whole invention, he intended to do so.

"*Haworth v. Hardcastle*, Web. P. C. 484.

"2. Because specifications should be construed liberally, in accord- "ance with the constitution and the patent laws of the United States, to "promote the progress of the useful arts and allow inventors to retain "to their own use not anything which is a matter of common right, but "what they themselves have created." On page 344 the court says further: "It is not necessary that the result be the same in degree; it must be the "same in kind."

The patent should be liberally construed to protect the patentee.

Grant v. Raymond, 6 Peters, 218.

In *Barker v. Stowe*. 14 O. G., 559, the plaintiff had a patent on a solid rubber chain pump bucket, bearing tightly in the well tube bore, with slightly convex upper surface, with drip hole through the length of the bucket, The defendant used a solid cylindro-conical metal bucket having a drip hole, and encased in a rubber covering; the cylindrical portion of the bucket fitting the tube bore, while the cone was superposed; the drip hole was differently arranged and more effective than the patented bucket.

It was held to be an infringement.

In Amos v. Howard, 1 Sumn., 485, Judge Story says:

"It has always been the course of the American courts to construe "those patents fairly and liberally, and not to subject them to any over- "nice and critical refinements."

The same doctrine is laid down in *Blanchard v. Sprague*, 3 Sumn., 540.

Savern v. Hall, 1 O. G., 437, is a case where complainant had a patent on a flanged collar for supporting the spokes of a carriage, and defendant used a mortised collar for the same purpose. The court held it an infringement, (decision by Woodruff, Circuit Judge, Dist. of Conn. See full case, especially p. 442, and conclusion of the court.)

Clark v. Scott, 2 O. G., 4, was decided by Judge Blatchford. The patent in litigation was for a hand mirror.

The specification described a hand mirror with a base of wood or other suitable material, elongated to form a handle, with metal or other stiffener. The hand mirror of defendant was of cement, applied in a plastic state and then hardened. Embedded in the cement and concealed from view are two flat wires running from the body of the mirror through the neck into the handle. It was held to be an infringement,

In *Murphy v. Eastman*, 2 O. G., 61, Judge Shepley says:

"After a patentee has described his invention and shown its princi- "ples, and claimed it in a form which perfectly embodies it, unless he "disclaims other forms, he is deemed to claim every form in which his "invention may be copied."

"A retractor consisting of an elastic hook passing over an inflexible "flange outside of a cartridge is a mere equivalent for a rigid hook enter- "ing over an elastic flange inside of a cartridge." *Renwick v. Pond*, 2 O. G., 392.

"A mechanical equivalent as generally understood is where one device "may be adopted instead of another to perform the known function of the "latter, by a person skilled in the art." *Smith v. Marshal*, 10 O. G., 375–6, West Dis't. Penn.

In *Frink v. Petry*, 5 O. G , 201 (Blatchford, J.) a patent for a reflector constructed with metallic substance with glass in front of it so arranged as to leave an air space between the glass and the metal, was held to be infringed by a reflector of glass coated with metal.

In *Sewell v. Clark*, 9 O. G., 47, Justice Hunt, of the U. S. S. C., says referring to the specification :

"Further on, the patentee, Winslow, says, 'I recommend the following "'method:' This is not of the substance of the patent. A recommenda- "tion is quite different from a requirement. The latter is a demand, an "essential, a necessity ; the former is a choice or preference between dif- "ferent modes or subjects, and is left to the judgment of the operator. "He may adopt it * * * * but he may reject it, and still accom- "plish his object by means of the patent.

It is well settled that a device which uses the same means as a patent constitutes an infringement, although it embodies others which give it greater value.

Taylor v. Wood, 8 O. G., 90 (Blatchford, J.)

This case also holds that "although in patent No. 77,933, the rubber is described and claimed as having an external surface of corrugated India rubber, the patent is infringed by a rubber the external surface of which is of cloth or leather, but corrugated, and is stuffed so as to be but slightly elastic."

In *Ex-parte Rees*, 16 O. G, 460, the Comm'r of Patents says :

"It is well settled that a mere change of material in the construction "of a machine or an article where the superiority attained is due alone "to the nature of the material employed, unaccompanied by changes of "adaptation or useful results not before contemplated, is not invention."

Where one inventor precedes all others in a particular department, he acquires a monopoly as against all formal variations of the same.

C. & N. W. Ry. Co. Sayles, 15 O. G., 243.

Union Co. v. Pultz and W. Co., 15 O. G., 423.

A machine embodying the patented invention is none the less an in-

fringement because it contains improvements rendering it more effectual in operation than the patented machine.

Howes v. McNeal, 15 O. G., 608.

Bell v. Gray, *Id.* 776.

Clough v. Gilbert and B. Mfg Co., *Id.*, 1008.

In *American Mfg Co. v. Lane*, 14 Blatch., 442, complainant had a patent on tempering umbrella braces, etc., in a square groove, and defendant used a V shaped groove. *Held* to be an infringement.

See also as pertinent,

DeFlorez v. Raynolds, 14 Blatch., 505. (See 508.)

Stanley Rule and L Co. v. Bailey, *Id.*, 510, 516.

American Diamond Rock Boring Co. v. Sullivan Machine Co., *Id.*, 119. (See 124.)

Ex-parte Ewart, 17 O. G., 448.

Greenleaf v. Yale Lock Mfg Co., *Id* 625. (See 628.)

Curtis on Patents, 3d ed., Secs. 71, 72, 73, 308, 323, 332, 333, 334.

All which is respectfully submitted.

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